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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

May 18, 2011 - 10:13 a.m.
Public Utilities Commission
21 South Fruit Street
Suite 10
Concord, New Hampshire

DAY 1
MORNING SESSION ONLY

RE: SEC Docket No. 2011-01
Joint Motion of Laidlaw Berlin
BioPower, LLC, and Berlin Station,
LLC, for Transfer and Amendment
of the Certificate of Site and
Facility Issued to Laidlaw Berlin
BioPower, LLC, and Notice of
Change of Major Contractor.
(Public hearing)

PRESENT:	SITE EVALUATION SUBCOMMITTEE:
Thomas Burack, Cmsr. (Presiding as Chairman)	Dept. of Environmental Services
Thomas Getz, Chairman (Vice Chairman of SEC)	Public Utilities Commission
Clifton Below, Cmsr.	Public Utilities Commission
Amy Ignatius, Cmsr.	Public Utilities Commission
Elizabeth Muzzey, Dir.	N.H. Div. of Historical Res.
Harry Stewart, Dir.	Water Division - DES
Robert Scott, Dir.	Air Resources Division - DES
George Bald, Cmsr.	Dept. of Resources & Econ. Dev.
Joanne Morin, Dir.	Office of Energy & Planning
Brad Simpkins, Interim Dir.	Div. of Forests & Lands - DRED
Michael Harrington	Public Utilities Commission

* * *

Counsel for the Committee: Michael Iacopino, Esq.

COURT REPORTER: STEVEN E. PATNAUDE, LCR No. 52

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ALSO PRESENT:

REPTG. THE APPLICANT:
(Laidlaw Berlin BioPower)

Barry Needleman, Esq.
Cathryn E. Vaughn, Esq.
(McLane, Graf, Raulerson
& Middleton)

COUNSEL FOR THE PUBLIC:

K. Allen Brooks, Esq.
Peter C. L. Roth, Esq.
Senior Asst. Attys. General
N.H. Dept. of Justice

REPTG. THE CITY OF BERLIN, NH:

Merritt Schnipper, Esq.
(Downs, Rachlin & Martin)

REPTG. EDREST PROPERTIES, LLC:

Jonathan Edwards

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I N D E X

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 RAYMOND KUSCHE
 ROSS D'ELIA

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E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
Applicant 1	Amended and Restated Power Purchase Agreement (05-18-11)	premarked
Applicant 2	Document regarding the Laidlaw Advisory Committee, consisting of Michael P. Ferree, Michael Loulokis, and Charles Grecco	premarked
Applicant 3	Biomass Fuel Supply Agreement {CONFIDENTIAL & PROPRIETARY}	premarked
PC 1	Laidlaw Berlin BioPower and Berlin Station Responses to Data Requests of Counsel for the Public	premarked
PC 2	Confidential Response to Number 8 {CONFIDENTIAL & PROPRIETARY}	premarked
PC 3	Spreadsheet titled "Berlin Station, LLC, Summary" (05-11-11) {CONFIDENTIAL & PROPRIETARY}	premarked
PC 3.1	Spreadsheet titled "Berlin Station, LLC, Summary-Assuming Market Revenue" (05-13-11) {CONFIDENTIAL & PROPRIETARY}	premarked
PC 4	"Direct Development Costs" chart	premarked
PC 5	Berlin Station Capital Structure	premarked
PC 6	NewCo Energy, LLC, Balance Sheets as of December 31, 2009, 2010 & April 30, 2011 {CONFIDENTIAL & PROPRIETARY}	premarked

P R O C E E D I N G

1
2 CHAIRMAN BURACK: Good morning, ladies
3 and gentlemen. We are here today for a public meeting of
4 the New Hampshire Site Evaluation Committee. As many of
5 you already know, the Committee is established by RSA
6 162-H. The membership of this Committee includes the
7 Commissioners or Directors of a number of State agencies,
8 as well as designated senior personnel from various State
9 agencies. In just a moment, I'm going to ask the members
10 of the Subcommittee who are present at this meeting to
11 introduce themselves. I will point out that Commissioner
12 Clifton Below, of the Public Utilities Commission, will be
13 joining us a little later this morning. Also, to my
14 immediate right is Attorney Michael Iacopino, who serves
15 as legal counsel to the Committee for purposes of this
16 proceeding. And, I just want to remind everyone here that
17 it would not be appropriate to have what we would call "ex
18 parte communications" regarding the subject matter of this
19 proceeding with individual Committee members. If members
20 of the public or the press have questions about the
21 proceeding, I would ask that those be directed to Attorney
22 Iacopino.

23 So, with that, I would ask that the
24 members who are present today please introduce themselves.

1 I apologize that we do not have the name placards here
2 today. So, please start here on the right.

3 DIR. STEWART: Harry Stewart, Department
4 of Environmental Services, Water Division Director.

5 DIR. MUZZEY: Elizabeth Muzzey, Director
6 of the Division of Historical Resources and the Department
7 of Cultural Resources.

8 DIR. MORIN: Joanne Morin, Director of
9 the Office of Energy & Planning.

10 DIR. SCOTT: Bob Scott, Director of the
11 Air Resources Division with the Department of
12 Environmental Services.

13 CHAIRMAN GETZ: Tom Getz, Chairman of
14 the Public Utilities Commission and Vice Chair of this
15 Committee.

16 CMSR. IGNATIUS: Amy Ignatius,
17 Commissioner with the New Hampshire PUC.

18 DIR. SIMPKINS: Brad Simpkins, Division
19 of Forests & Lands.

20 CMSR. BALD: George Bald, with the
21 Department of Resources & Economic Development.

22 MR. HARRINGTON: Michael Harrington, New
23 Hampshire PUC.

24 CHAIRMAN BURACK: Again, my name is Tom

1 Burack. I serve as Commissioner of the Department of
2 Environmental Services, and, by statute, I also serve as
3 Chairman of the Site Evaluation Committee.

4 Our agenda today involves only one item,
5 which is an adjudicatory hearing in Docket Number 2011-01,
6 Joint Motion of Laidlaw Berlin BioPower, LLC, and Berlin
7 Station, LLC, for Transfer and Amendment of a Certificate
8 of Site and Facility issued to Laidlaw Berlin BioPower,
9 LLC, and Notice of Change of Major Contractor. Let me
10 provide some brief history here.

11 On November 8, 2010, the New Hampshire
12 Site Evaluation Committee, referred to as the "Committee",
13 issued a Certificate of Site and Facility, which we refer
14 to as the "Certificate", to Laidlaw Berlin BioPower, LLC,
15 for the siting, construction, and operation of a 70
16 megawatt biomass fueled electric power facility located in
17 Berlin, Coos County, New Hampshire, which we refer to as
18 the "Facility".

19 On March 9, 2011, Laidlaw Berlin
20 BioPower, LLC, and Berlin Station, LLC, we will refer to
21 these entities going forward as the "Joint Applicants",
22 filed a Joint Motion to Amend the Certificate, to transfer
23 the Certificate to Berlin Station, LLC, and to notify the
24 Committee of a change in major contractors, and this is

1 what we refer to as the "Joint Motion". The Joint
2 Applicants propose to transfer the Certificate to Berlin
3 Station, LLC. Berlin Station, LLC, is a special purpose
4 entity, whose members are BBP Holdings 1, LLC, 99 percent,
5 and BBP Holdings 2, LLC, 1 percent. BBP Holdings 1, LLC,
6 is an indirect subsidiary of NewCo Energy, LLC. BBP
7 Holdings 2, LLC, is a subsidiary of CSC Group Holdings,
8 LLC. Berlin Station, LLC, intends to execute a right of
9 use agreement with Burgess BioPower, LLC, an indirect
10 subsidiary of NewCo Energy, LLC, permitting Burgess
11 BioPower, LLC, to lease and manage the Facility and all
12 certificates, licenses and contracts pertaining thereto.

13 In addition, the Joint Applicants seek
14 to amend the Certificate to permit operation at
15 75 megawatts, rather than 70 megawatts. The increase in
16 output is asserted to be achieved through design
17 efficiencies and will not require additional fuel. The
18 Joint Applicants further request that the Certificate be
19 amended to permit a change in the fuel supply contractor.

20 Transfer of the Certificate and
21 amendments to the Certificate are required to be approved
22 by the Committee pursuant to RSA 162-H. The Committee's
23 authority to approve or deny the proposed transfer and
24 amendments is set forth at RSA 162-H:4, 162-H:5, I, and

1 New Hampshire Code of Administrative Rules, Site 203.

2 Notice of this proceeding was issued on
3 May 2, 2011, as part of our Order on Motions to Intervene
4 and Further Procedural Order. The Order of May 2, 2011
5 was posted at the Department of Environmental Services, at
6 the Office of the Public Utilities Commission, and on the
7 Committee's website in accordance with RSA 91-A. The May
8 2, 2011 Order was also distributed to all parties of
9 record and the service list in this docket.

10 The public will be represented in this
11 proceeding by duly appointed counsel for the public, K.
12 Allen Brooks and Peter Roth, both are Senior Assistant
13 Attorneys General. The Joint Applicants are represented
14 by Barry Needleman and Cathryn Vaughn, from McLane, Graf,
15 Raulerson & Middleton. The City of Berlin is represented
16 by Peter Van Oot, of Downs, Rachlin & Martin. Edrest
17 Properties, LLC, is represented by its managing member,
18 Jonathan Edwards.

19 In this proceeding, we will first take
20 appearances. The Joint Applicants will then present their
21 witnesses, along with any prefiled testimony and exhibits.
22 It is my understanding that the Applicant will present
23 three witnesses in this proceeding; Matthew Eastwick,
24 Raymond Kusche, and Ross D'Elia. The direct testimony of

1 these witnesses has been prefiled. After -- I think we
2 have an agreement that we're going to hear all these
3 witnesses sitting on a single panel. And, so, what we
4 will do is to have each witness adopt his pretrial
5 testimony, and then we will proceed to cross-examination.
6 Cross-examination first by Counsel for the Public, and I
7 believe that will be cross-examination of all the
8 witnesses. This is the way we wish to proceed. And,
9 then, cross-examination by the City of Berlin, and then
10 cross-examination by Edrest Properties, LLC.

11 It is my understanding that Counsel for
12 the Public, the City of Berlin, and Edrest Properties have
13 not filed any testimony and do not intend to present any
14 witnesses.

15 Once the Joint Applicants have rested
16 their case, we will then hear closing arguments, public
17 comment, if any. And, if time permits, the Committee may
18 deliberate on the merits of the Joint Motion. It is my
19 current intention to close today's proceedings not later
20 than 4:00 p.m. I will note that I'm aware of at least one
21 member of the Committee who will have to leave here at
22 approximately 2:30 to attend a meeting downtown and then
23 return. So, we're just going to have to see how things
24 progress here. I also anticipate that we will take a

1 lunch break here, probably sometime between approximately
2 12:00 and 1:00.

3 I will remind the parties that the
4 issues in this docket are limited to the matters raised in
5 the Joint Motion. This is not an opportunity to
6 re-litigate the issuance of the Certificate of Site and
7 Facility.

8 So, with that, I would ask that we now
9 please have the appearances. Attorney Needleman, would
10 you wish to start.

11 MR. NEEDLEMAN: Barry Needleman, from
12 McLane, Graf, Raulerson & Middleton, for the Joint
13 Applicants. And, with me is my colleague, Kate Vaughn.

14 CHAIRMAN BURACK: Thank you. Counsel
15 for the Public.

16 MR. BROOKS: Allen Brooks, Counsel for
17 the Public. And, Mr. Chairman, if I may, looking at the
18 agenda, the Counsel for the Public would prefer to go
19 last, in terms of cross-examination, rather than first.
20 Not after the Committee, but after the other, Edrest
21 Properties and the City of Berlin, to the extent that that
22 examination is there.

23 CHAIRMAN BURACK: Okay. I'd be happy to
24 accommodate that. Okay. Counsel for the City.

1 MR. SCHNIPPER: Peter Van Oot is not
2 here today. I'm Merritt Schnipper, on behalf of the City
3 of Berlin, from the Downs, Rachlin & Martin, PLLC, firm.

4 CHAIRMAN BURACK: Thank you very much,
5 Attorney Schnipper. I apologize. I saw you there, and I
6 was looking around quickly to see if Attorney Van Oot was
7 here as well.

8 MR. SCHNIPPER: He just got younger.

9 CHAIRMAN BURACK: Very well.
10 Mr. Edwards.

11 MR. EDWARDS: Jonathan Edwards, on
12 behalf of Edrest Properties, LLC.

13 CHAIRMAN BURACK: Very good. Thank you,
14 all.

15 MR. ROTH: Mr. Chairman, Peter Roth for
16 Counsel for the Public.

17 CHAIRMAN BURACK: Thank you. There is
18 one item that I am going to ask Counsel for the Joint
19 Applicants to address now, simply to provide us all with a
20 status report on the Power Purchase Agreement and
21 proceedings before the Public Utilities Commission on that
22 matter. If you could do that for us, Attorney Needleman,
23 and then we will have the witnesses sworn and we'll begin
24 with the presentations of the witnesses.

1 MR. NEEDLEMAN: Sure. I think you have
2 what we've marked as "Exhibit 1". As the Committee's
3 probably aware, on April 18th, the Public Utility
4 Commission issued an order on the originally proposed PPA,
5 conditionally approving it, subject to certain changes
6 being made. The Joint Applicants worked with Public
7 Service Company of New Hampshire over the course of the
8 last month to make those changes consistent with what they
9 believe the PUC was seeking. And, they have revised that
10 PPA. And, my understanding is that the copy of Exhibit 1
11 that you have is what is being filed this morning by PSNH
12 with the PUC. And, the Parties believe that that document
13 is now consistent with all of the requirements of the
14 PUC's April 18th order. And, we are prepared, if
15 necessary, to discuss that document today, to the extent
16 that it bears on any issues in this proceeding.

17 CHAIRMAN BURACK: Thank you. But could
18 you also help us understand what your understanding is of
19 what the proceedings before the PUC will be from this
20 point forward with respect to this PPA?

21 MR. NEEDLEMAN: I don't have crystal
22 clear understanding of it. My belief is that, if the --
23 my belief is that the document that we submitted to the
24 PUC is completely consistent with all of the changes that

1 it wanted to see. And, as a consequence, I believe that
2 the Commission conditionally approved this document as
3 described in its order if it finds that it's consistent.
4 I don't know precisely what the Commission is going to do
5 from this point forward, in terms of making that
6 determination, but that's how I understand it will occur.

7 CHAIRMAN BURACK: Is it your
8 understanding that, if this PPA is subsequently approved,
9 this amended and restated Power Purchase Agreement is
10 subsequently approved by the Public Utilities Commission,
11 that there would then be a subsequent filing here with the
12 Site Evaluation Committee for a modification of the
13 Certificate, to be able to amend the Certificate to
14 recognize this amended and restated PPA?

15 MR. NEEDLEMAN: We can do it that way,
16 if the Committee would like it done that way. We can also
17 represent that, if this document is approved, that it
18 could be wrapped into this proceeding today, if the
19 Committee would like to do it that way.

20 CHAIRMAN BURACK: I think what we'll
21 have to do, and we'll discuss this further later, we're
22 going to have to look at the language in the Certificate
23 as it was originally granted, to see if that process that
24 you've described would be workable or not.

1 MR. NEEDLEMAN: Okay. And, we're happy
2 to work with the Committee however you want to do it.

3 CHAIRMAN BURACK: Thank you. Okay.
4 Could we now take the oath from the witnesses.

5 (Whereupon Matthew Eastwick,
6 Raymond Kusche, and Ross D'Elia were
7 duly sworn and cautioned by the Court
8 Reporter.)

9 CHAIRMAN BURACK: Thank you. Before we
10 start presenting the witnesses, I was just reminded that
11 we did receive a Motion for Protective Order -- Motion for
12 Protective Order and Confidential Treatment, just looking
13 for a copy of that document. Please bear with us for just
14 a moment. There is an order that will be issued today on
15 Motions for Protective Order and Confidential Treatment
16 with respect to the interconnection request and the fuel
17 supply agreement, which will approve that motion. So,
18 that will provide that, if we -- if it becomes necessary
19 for us to ask questions about matters specifically
20 relating to those documents, that we would need to go into
21 a closed session for purposes of considering those.

22 MR. IACOPINO: And, Mr. Chairman, that's
23 the motion as filed on March 9th and the motion filed on
24 May 11th that you've granted, is that correct?

1 CHAIRMAN BURACK: That is correct. And,
2 again, our understanding is that no party has objected to
3 either of those motions.

4 With that, Attorney Needleman, would you
5 like to present your witnesses.

6 MR. NEEDLEMAN: Yes. Thank you, Mr.
7 Chairman.

8 MATTHEW EASTWICK, SWORN

9 RAYMOND KUSCHE, SWORN

10 ROSS D'ELIA, SWORN

11 DIRECT EXAMINATION

12 BY MR. NEEDLEMAN:

13 Q. I'll begin with Mr. Eastwick. Can you please state
14 your name and business address for the record?

15 A. (Eastwick) Matt Eastwick, One Cate Street, Portsmouth,
16 New Hampshire.

17 Q. And, Mr. Eastwick, there was prefiled testimony filed
18 with the Joint Motion by Keith Mueller in this case.
19 Do you recall that?

20 A. (Eastwick) Yes.

21 Q. And, then, subsequent to that, we filed notice with the
22 Committee that you would be substituting for
23 Mr. Mueller and we provided your resumé. Do you recall
24 that?

1 A. (Eastwick) Yes.

2 Q. Focusing on that prefiled testimony that you will now
3 be adopting for Mr. Mueller, I understand that there
4 are two additions you have to that testimony, is that
5 correct?

6 A. (Eastwick) Yes.

7 Q. And, one is with respect to the Exhibit 1, the PPA that
8 was filed today. And, I understand that you're
9 prepared to discuss the financial implications of that
10 revised PPA, is that correct?

11 A. (Eastwick) Yes.

12 Q. And, then, the second addition related to what I
13 believe is Exhibit 2, the Laidlaw Advisory Board.
14 Could you describe that change please?

15 A. (Eastwick) The change to the Laidlaw Advisory Board?

16 Q. Correct.

17 A. (Eastwick) There are three members of the Advisory
18 Board: Michael Ferree, Michael Loulokis, and Chuck
19 Grecco.

20 Q. And, my understanding is that Mr. Ferree and
21 Mr. Loulokis were original members of the Board from
22 the first proceeding, and that Mr. Grecco has now been
23 substituted for Mr. Mueller, is that correct?

24 A. (Eastwick) Yes.

1 MR. NEEDLEMAN: Okay. And, the
2 Committee has Exhibit 2, which highlights that
3 substitution. And, I believe all the parties previously
4 received that.

5 BY MR. NEEDLEMAN:

6 Q. Then, subject to those additions, do you adopt and
7 swear to the prefiled testimony as your own?

8 A. (Eastwick) Yes. Yes, I do.

9 Q. Thank you. Let me move on to Mr. Kusche. Could you
10 state your name and business address for the record
11 please?

12 A. (Kusche) My name is Raymond Kusche. My business
13 address is One Cate Street, Portsmouth, New Hampshire.

14 Q. And, you also had prefiled testimony filed with the
15 original application on March 9th, is that correct?

16 A. (Kusche) That's correct.

17 Q. Do you have any changes or additions to that prefiled
18 testimony?

19 A. (Kusche) I do have one addition. And, that relates to
20 the discussion about the System Impact Study and the
21 Interconnection Agreement with Independent System
22 Operator-New England, ISO-New England. Since I filed
23 my original testimony, we have progressed to the point
24 where we now have a Final Draft Stability System Impact

1 Report from ISO-New England, which we received on May
2 16th. And, the results of that study indicate that
3 there will be no adverse impact to the transmission
4 system for adding the 9.1 megawatts of gross capacity,
5 which we requested.

6 And, the next steps will be, we will
7 have a meeting with ISO-New England and PSNH to review
8 the report. We have accepted the results of the
9 report. So, following that meeting, which will take
10 place within ten days of May 16th, we will then move
11 forward. The report will be sent to the Reliability --
12 first, two task forces at ISO-New England where it will
13 be reviewed and I'm told accepted. Then, it will go to
14 the Reliability Committee at ISO-New England, where I
15 am told it will again be accepted and approved. And,
16 we will then, actually, on a parallel path with what
17 ISO-New England is doing internally, we will be
18 amending the existing interconnection agreement between
19 Laidlaw Berlin BioPower, ISO-New England, and PSNH, to
20 amend it to include this megawatt increase.

21 Q. Subject to those additions then, do you adopt and swear
22 to the prefiled testimony as your own?

23 A. (Kusche) Yes, I do.

24 Q. Let me move on to Mr. D'Elia please. Could you state

1 your name and business address for the record.

2 A. (D'Elia) My name is Ross D'Elia, President of HHP, at
3 14 Buxton Industrial Drive, Henniker, New Hampshire.

4 Q. And, Mr. D'Elia, you had prefiled testimony filed with
5 the original application, and then recently you also
6 submitted supplemental prefiled testimony. Do you
7 recall that?

8 A. (D'Elia) I do.

9 Q. And, are there any changes or additions to that
10 prefiled testimony at this time?

11 A. (D'Elia) There is none.

12 Q. And, then, do you adopt both the original prefiled
13 testimony and the supplemental prefiled testimony as
14 your own and swear to it?

15 A. (D'Elia) I do.

16 MR. NEEDLEMAN: Thank you. Mr.
17 Chairman, nothing further at this time, and the witnesses
18 are available for examination.

19 CHAIRMAN BURACK: Very good. Thank you
20 very much. Attorney Schnipper.

21 MR. SCHNIPPER: Thank you, Mr. Chairman.
22 Just a few questions --

23 (Court reporter interruption.)

24 MR. SCHNIPPER: I'm sorry.

1 CHAIRMAN BURACK: And make sure your
2 microphone is on.

3 MR. SCHNIPPER: Can you hear me now?
4 How's that? All right.

5 CROSS-EXAMINATION

6 BY MR. SCHNIPPER:

7 Q. Just a few questions first for Mr. Eastwick, and I
8 apologize for asking questions from the back this way.
9 So, Attorney Needleman just said that you were in a
10 position to discuss the PPA as submitted this morning.
11 I know that the financing, the project financing is
12 contingent upon the lenders being satisfied with the
13 PPA as approved, is that correct?

14 A. (Eastwick) Yes.

15 Q. And, have the lenders had the opportunity to review the
16 terms under which the PPA was submitted this morning?

17 A. (Eastwick) Yes, they have.

18 Q. And, so, within the -- kind of the "as revised" PPA,
19 they feel comfortable with the cash flow for the
20 project that that would provide?

21 A. (Eastwick) Yes.

22 Q. All right. Moving on to the question of the New Market
23 Tax Credits. And, as I understand from your prefiled
24 testimony, the change in corporate structure that's one

1 of the proposed amendments here is necessary in order
2 to qualify for the New Market Tax Credit Program, is
3 that still accurate?

4 A. (Eastwick) Yes, it is.

5 Q. And, last summer at the certificate hearings,
6 Mr. Bartoszek testified that "although the Project
7 could go forward without the New Market Tax Credits,
8 that there would still be enough equity and debt
9 available to move the Project forward that, basically,
10 it was nice to have as much available funds as possible
11 for this Project." Is that still an accurate
12 statement?

13 A. (Eastwick) Yes, it is.

14 Q. And, if this amendment is denied, will the possibility
15 of New Market Tax Credit funding for this Project
16 disappear?

17 A. (Eastwick) Which amendment are you referring to?

18 Q. I'm sorry. The amendment -- the sub part of the
19 amendment that's proposing to amend the Certificate to,
20 you know, have the new corporate structure in place. I
21 guess what I'm saying is, if this amendment is denied,
22 will the New Market Tax Credit funding dry up?

23 A. (Eastwick) Well, the best way to answer that question
24 is, we've structured our organization and our corporate

1 entities to accommodate New Market Tax Credit
2 allocatees. So, we could find other ways to
3 accommodate them. But we think this is the best way.

4 Q. All right. Thanks. Then, I just have a few questions
5 for Mr. D'Elia. Mr. D'Elia, in your pre -- in your
6 supplemental prefiled testimony, you discussed, in the
7 response to the question about staffing the Project,
8 you talked about meeting with landowners, both to
9 obtain wood contracts and to engage in a period of
10 education that would assist landowners or I guess small
11 business people in sort of determining what equipment
12 they should purchase in order to participate in
13 supplying the wood for this Project and to decide, I
14 guess, if they wanted to engage in that. Could you
15 give a few more details about what that education
16 process would be like?

17 A. (D'Elia) Well, the -- what I'm talking about is the
18 landowners, but, more specifically, the wood
19 contractors, who will have to make substantial
20 investments in machinery. And, so, they will need
21 encouragement to go out there and make those
22 investments. So, because of the plant, of the
23 consumption that it's going to be using, the volumes,
24 and the years that it will be using that consumption,

1 we are, you know, hopefully encourage them to make
2 those investments.

3 Q. And, I guess, will the role of RCT be to basically kind
4 of inform them of the nature of the business
5 opportunities that are there if they make these
6 investments? Will it be to assist them in
7 understanding exactly what equipment is needed, you
8 know?

9 A. (D'Elia) Yes. It will be a little bit of both. You
10 know, we will definitely help them to make the choices
11 of what size equipment to have, you know, not to -- to
12 make sure they don't get, you know, over their head
13 buying too much machinery and have too much of a
14 capital cost. But, you know, there is a workforce up
15 there now that is supplying the pulpwood industry.
16 And, so, there is some modifications for equipment,
17 example, chippers that they would have to buy to
18 produce these whole tree chips.

19 Q. Now, I know you're not in a position to comment on the
20 Cousineau business structure or their particular
21 business as opposed to your own. But one of the things
22 that Mr. Richmond, when he testified, really stressed
23 was the idea that, you know, this increased demand and
24 the presence of this new facility in Berlin was going

1 to encourage many people, who had either, you know,
2 stopped logging temporarily, gotten out of the
3 business, to get back in. Is that something that you
4 feel will, you know, is going to happen regardless of
5 who the supplier is? And, I guess, specifically, my
6 question is, given the facts that it seems that you
7 have a very much more integrated North Country
8 operation than Cousineau had. And, I'm wondering to
9 what extent, the fact that you have a very integrated
10 operation up there, you think will reduce the demand
11 for sort of new entrants into the market?

12 A. (D'Elia) No. We definitely need the existing suppliers
13 that are supplying both to sawmills and the pulpmills
14 now to upgrade and expand. And, we're going to need a
15 lot more suppliers that have pretty much disappeared
16 since the Berlin and the plant in Northumberland shut
17 down, the Groveton paper mill shut down. So, we're
18 going to need all of that.

19 And, then, of course, the other fact is
20 that, on the landowner base, we basically want to
21 encourage them to hire foresters to do forest
22 management plans and "put some paint on the trees", as
23 they say, to encourage, you know, stumpage sales, and
24 to -- and, so, that's another big thing that we have to

1 do before the plant even begins to open. We have to
2 get stumpage bought so that the wood supply is secured,
3 and also encourage the operators to upgrade to have the
4 machinery to do the job.

5 Q. So, you anticipate a significant amount of new purchase
6 locally to fuel this Project?

7 A. (D'Elia) Yes. Because of the value of the product, be
8 it biomass whole tree chips, you want to use -- to be
9 working in as close proximity to the plant as possible.

10 Q. Now, you have two facilities I believe within about 15
11 miles of Berlin. Can you say -- is there a way that
12 you can say what percentage of the fuel that would go
13 to Berlin would come basically from, you know, product
14 that's basically waste product now from your other
15 operations, if any?

16 A. (D'Elia) You know, there may be some bark from the
17 Milan facility. And, you know, occasionally there may
18 be some bark from the Shelburne facility. But that
19 bark is owned by NewPage. And, NewPage has a bark
20 boiler, so they may be burning that as well. So, I
21 wouldn't count that as a fuel source on a continuous
22 basis. But the Milan facility generates about five
23 trailer loads a day of bark, so that could end up in
24 Berlin.

1 Q. Okay. Now, in your prefiled testimony, you discussed
2 how you would staff the facilities, specifically there
3 was some -- there would be staff for examining --
4 basically examining the loads that came in and
5 coordinating deliveries. Do you anticipate those being
6 new hires in the area or are those people who are
7 already with your company who will be moved?

8 A. (D'Elia) Oh, no. They would be new hires.

9 Q. And, as far as the backhaul operations, and, again,
10 this may be asking you to comment on the Cousineau
11 business that you may not have any knowledge about,
12 but, you know, I know that you're backhauling out of
13 Canada as well, and I don't recall if Cousineau really
14 was. But is there any way to estimate what percentage
15 of the fuel will be coming through backhauls?

16 A. (D'Elia) The backhaul scenario would be -- presently,
17 we're hauling bark out of Canada, out of northern
18 Maine, and out of Milan, down to our Brenton --
19 Brentwood yard, which is a bark processing yard for the
20 mulch business. And, presently, those trucks are
21 coming back to our Henniker facility, picking up pulp
22 chips, and going back to various paper companies. So,
23 that's already in place. And, we're going to -- we
24 plan on having some off-site storage, maybe at

1 Brentwood, maybe at other yards, to backhaul into the
2 Berlin Station, especially during mud season. So, that
3 would be how it would work.

4 Q. So, there's really no way of saying, kind of, I guess,
5 without knowing the conditions on the ground from
6 day-to-day, what percentage of the fuel would end up
7 being backhauls from farther away?

8 A. (D'Elia) No. And, I would say it would probably be a
9 higher percentage in the spring conditions, in the
10 fall, mud conditions. But, again, for economic
11 purposes and so forth, the majority of the wood we hope
12 to get out of Coos and Grafton County.

13 Q. Okay. One final question. You discuss in your
14 testimony that your personnel will be tracked,
15 basically examining loads, and I assume talking with
16 loggers as well, to ensure that sustainability
17 conditions and other certificate conditions were
18 basically being obeyed in the harvesting. Can you just
19 talk a little bit more about what the procedure is for
20 determining compliance? Is it basically just kind of
21 an honor system or is there kind of, you know, visiting
22 to the sites of harvests that you would do?

23 A. (D'Elia) Well, it would start with the contract with
24 the supplier. The supplier would have to sign a

1 sustainability contract, pretty much like we are, RCT
2 has to signed with Laidlaw. And, so, they would have
3 an understanding of what's going to be expected, you
4 know, and what -- their operations, in order to procure
5 their wood. And, again, this is what's going on now.
6 When they're supplying roundwood to the pulp and paper
7 companies, they all have some sort of sustainability
8 clauses in their contracts. So, this is not something
9 new that the operators have to adjust to. This is sort
10 of a course of business.

11 And, to expand on that, if a jobber is
12 doing a job, like on a state job or even a federal job,
13 and even on private landowners, there are foresters
14 overseeing the day-to-day operations. And, on top of
15 that, you have forest rangers going in there to check
16 to make sure that, you know, best management practices
17 are going on and they're not, you know, abusing the
18 site. On top of that, when the wood comes in, the wood
19 is going to be scheduled to come in, and each operator
20 will have an estimated volume to deliver on a weekly
21 basis. And, along with that will be that information
22 is, when he weighs in, part of it will be the name of
23 the operator, the trucker, where the lot -- where the
24 wood came from, the landowner, and in that will be, you

1 know, whether it was a managed forest -- a managed job,
2 be it a forester oversight, there will be a lot of
3 information put down in the data so that we could
4 record how the wood is being produced, where it's
5 coming from.

6 Q. And, when you reviewed the Laidlaw sustainability
7 condition, how would you say that compares to the other
8 conditions under which your company and other loggers
9 that you buy from are working?

10 A. (D'Elia) You know, it's a bit more specific. But it's
11 -- being that, you know, it lists more specific
12 programs, like the Professional Logging Program or
13 whether the wood is coming off a tree farm or an FSC
14 job -- or an FSI land base. But, it's -- basically,
15 they're the same in that, you know, that the wood is
16 being -- the job is being done in a way that it's not
17 detrimental to the land.

18 MR. SCHNIPPER: All right. Thank you.

19 Mr. Chairman, I have nothing further.

20 CHAIRMAN BURACK: Thank you very much,
21 Attorney Schnipper. Mr. Edwards.

22 MR. EDWARDS: I do have a few questions
23 for Mr. Eastwick. And, I would --

24 (Court reporter interruption.)

1 MR. EDWARDS: I do have a couple of
2 questions for Mr. Eastwick that I would probably suggest
3 are of a confidential nature, and I would like to save
4 those. But I do have some questions for Mr. D'Elia that I
5 would like to ask of him.

6 BY MR. EDWARDS:

7 Q. Mr. D'Elia, in your testimony, I believe you stated
8 that Laidlaw would not create competition for Rumford,
9 Maine's NewPage facility. Could you elaborate on that,
10 on that testimony?

11 A. (D'Elia) Well, Laidlaw will be competition because of
12 the size of it for everybody in the forest products
13 industry, whether you are a pulpmill, sawmill or
14 another wood-fired facility. Just in its -- again,
15 because of its size. And, I would say that, as the
16 plant goes along through the years, it will become more
17 benign of a threat or a competition to the other
18 facilities, because the infrastructure will be built
19 around, closer to the Laidlaw facility to supply it
20 with biomass chips.

21 But, again, what's critical is that the
22 operators in the Coos/Grafton County know ahead --
23 ahead of time to make those investments for the
24 machinery, and, again, that the forest plans are drawn

1 up and the wood is designated to be chipped so that
2 there isn't a big shock to the system.

3 Q. Did you receive a copy of an email recently sent by
4 NewPage to the New Hampshire Site Evaluation Committee?

5 A. (D'Elia) I did.

6 Q. Okay. What exactly is NewPage pointing to in that
7 email of concern to them, in terms of what wood would
8 create competition for NewPage?

9 MR. NEEDLEMAN: Mr. Chairman, before he
10 answers, I'd just like to note something for the record.
11 Mr. D'Elia filed his supplemental testimony in part to
12 make the point that he was in concurrence with various
13 things that Mr. Richmond said for Cousineau in the
14 original proceeding. And, if you look at that transcript
15 from Day 3, the A.M. Session, at Page 73, Mr. Richmond was
16 asked these precise questions about NewPage, he answered
17 them, and Mr. D'Elia was simply indicating that he agreed
18 with Mr. Richmond.

19 And, so, I'm not objecting to the
20 question. But I would just like it noted for the record
21 exactly how that testimony came to be and what the purpose
22 was.

23 CHAIRMAN BURACK: Thank you. It is so
24 noted. Mr. Edwards, can you repeat your question?

1 MR. EDWARDS: Yes. I had asked
2 Mr. D'Elia if he received a copy of the email recently
3 sent by NewPage, and he indicated that he had. And, then,
4 I asked "what concern was there in that email regarding
5 the type of wood that would create competition for the
6 NewPage mill?

7 CHAIRMAN BURACK: You may proceed to
8 answer, Mr. D'Elia.

9 BY THE WITNESS:

10 A. (D'Elia) Yes. I don't know exactly what NewPage's
11 concern would be specifically. You know, I'm not in
12 their procurement program, per se, in-house. So, I
13 wouldn't -- I can't answer that.

14 BY MR. EDWARDS:

15 Q. In that email, did you notice that the concern centered
16 around, and, actually, the person that sent that email
17 had placed in capital letters, that the concern was
18 that the Laidlaw facility was to be utilizing the same
19 type of wood capitalized as "roundwood and tree tops",
20 otherwise known as "pulpwood". Would you agree that
21 that was the concern that that particular email was
22 focusing on?

23 A. (D'Elia) Yes.

24 Q. Being that you're involved with Carrier, and Carrier

1 furnishes the yard for NewPage, can you elaborate on
2 how many direct and indirect jobs NewPage produces in
3 New Hampshire and Maine, and would you agree that that
4 number could possibly reach into the several hundreds?

5 A. (D'Elia) I can't give you the number of jobs that
6 NewPage hires in New Hampshire and Maine. I have no
7 idea what that number is.

8 Q. The study done by LandVest for Laidlaw of wood supply
9 stated that there is insufficient volume of wood within
10 a 75-mile radius of Berlin. And, the proposed plant
11 would need to draw from an area of 100 miles in order
12 to get sufficient wood to supply the plant. Do you
13 agree with this assessment?

14 MR. NEEDLEMAN: Mr. Chairman, I'm going
15 to object at this point. The LandVest study pertained to
16 wood availability. That's not an issue in this
17 proceeding. That was previously decided by the Committee.

18 MR. EDWARDS: Your Honor, I'm just
19 trying to focus on distance.

20 CHAIRMAN BURACK: "Trying to focus on
21 the issue of distance", you said?

22 MR. EDWARDS: Yes.

23 CHAIRMAN BURACK: One moment please.

24 (Chairman Burack conferring with Mr.

1 Iacopino.)

2 CHAIRMAN BURACK: Mr. Edwards, can you
3 just elaborate for us how it is you see this relating to
4 the issue of distance?

5 MR. EDWARDS: I think my concern centers
6 on the fact that there is an index that is tied to another
7 facility that's of concern due to distance, due to the
8 economic impact that this could have. And, I'd just like
9 to ask a few questions on follow-up of that.

10 CHAIRMAN BURACK: I'm going to go ahead
11 and allow you to ask the questions and we'll see what
12 responses they're able to provide. And, we'll ultimately
13 make a determination as to what weight or relevance these
14 questions have to the issues that are before the Committee
15 at this time. But, go ahead, proceed and ask your
16 questions.

17 BY MR. EDWARDS:

18 Q. So, I'm curious, Mr. D'Elia, do you agree with that
19 assessment?

20 A. (D'Elia) Maybe you want to repeat that.

21 Q. Sure. The study done by LandVest for Laidlaw and the
22 wood supply stated that there's insufficient wood,
23 volume of wood within a 75-mile radius of Berlin, and
24 the proposed plant would need to draw from an area of

1 100 miles in order to get sufficient volume to supply
2 the plant. I'm just curious if you'd agree with that
3 assessment?

4 A. (D'Elia) I read the Laidlaw -- the LandVest report, but
5 I have no way of verifying whether it's correct or not.

6 Q. Would you agree that the 100-mile area includes most of
7 the counties in New Hampshire?

8 A. (D'Elia) It might, but I don't know that for a fact
9 either.

10 Q. Does Schiller draw its wood from many of the counties
11 from which Laidlaw's wood supply study says it will
12 draw wood?

13 A. (D'Elia) I don't know where Schiller draws. You know,
14 I could only suppose that it draws wood north, south,
15 and east of it, but -- I mean, west of it, but that's
16 all I know.

17 Q. So, if we were going with those directions that you're
18 spelling out, Schiller draws significant quantities of
19 wood from, let's say, Carroll, Belknap, Strafford
20 Counties, will you draw some wood from these counties,
21 in particular Carroll, which is 20 miles south of
22 Berlin?

23 A. (D'Elia) I suppose it's possible, yes.

24 Q. Are you aware that Schiller has many suppliers which

1 operate out of Carroll County?

2 A. (D'Elia) I don't know where Schiller, you know, where
3 their suppliers are located. I don't know what
4 counties they're in. I don't know their names.

5 Q. Isn't it likely, if Schiller does have suppliers out of
6 Carroll County, that you're going to share suppliers
7 with Schiller, particularly in the counties I
8 mentioned?

9 A. (D'Elia) Absolutely. And, I'm sure Schiller shares
10 suppliers with Pinetree, Bridgewater. I mean,
11 suppliers go through as many different markets as they
12 can possibly get into. So, on that statement, yes, I'm
13 sure they will supply -- share suppliers.

14 Q. And, your wood supply contract index is the price of
15 wood RCT is to be paid by Laidlaw to the price of what
16 wood?

17 A. (D'Elia) I believe it's Schiller.

18 Q. Isn't it true that at times the wood market experiences
19 both oversupply conditions and shortage conditions?

20 A. (D'Elia) Absolutely. And, that's what Richmond -- Mr.
21 Richmond said in his testimony as well.

22 Q. And, when shortage conditions occur, for a significant
23 period of time the laws of supply and demand work well,
24 as prices tend to rise so that supply can increase, is

1 that correct?

2 A. (D'Elia) Yes. I believe so, sir.

3 Q. So, because the price RCT is paid for wood by Laidlaw
4 rises, when, from what you're saying, Schiller's wood
5 price rises, and it's likely that Laidlaw will share
6 suppliers with Schiller, it occurs to me that it is in
7 RCT's best interest, when there's a shortage of wood,
8 to put as much pressure as possible on Schiller's wood
9 supply. Would you please comment on that.

10 A. (D'Elia) Well, two things. One of them is that we will
11 have off-site storage to try to buffer for the known
12 mud seasons, which are in the spring and in the fall.
13 And, we will probably, whether it's the suppliers out
14 of Carroll County, could be suppliers coming out of
15 Grafton County, it could be other suppliers coming out
16 of Coos County, could be suppliers coming out of
17 Vermont or western Maine. So, if we are running low, I
18 suppose it's, as Schiller could be running low, they
19 could be, you know, we will bump into the same
20 suppliers for the same material, yes.

21 Q. Okay. And, you've also mentioned that your company,
22 who's currently operating yards in Henniker and
23 Brentwood, potentially has the intention to utilize
24 either or both of these facilities in order to help

1 supply the proposed facility?

2 A. (D'Elia) It may be, they may help. But that wasn't the
3 intention, no.

4 Q. Okay. And, your Brentwood facility is what, about
5 20 miles from Schiller Station, is that correct?

6 A. (D'Elia) Yes, it is.

7 Q. Okay. And, during a period of short supply, RCT would
8 probably increase the price -- the prices it pays for
9 wood suppliers at the satellite yards, including
10 Brentwood, in order to increase the volume of wood
11 coming to those yards, is that correct?

12 A. (D'Elia) That would be probably the least efficient way
13 of doing it, because you have the double handling costs
14 involved.

15 Q. Could you explain that a little bit for me.

16 A. (D'Elia) Well, if you're telling us that we will pay
17 the same price in Brentwood, which is 20 miles from
18 Schiller, and pay the same price as Schiller is trying
19 to pay for the wood to go direct, we would have, on top
20 of -- we would have an extra cost of dumping the wood,
21 reloading the trucks, and trucking it from Brentwood to
22 Berlin, New Hampshire, which is totally uneconomical.

23 Q. So, then, would you agree then it's totally not
24 economically feasible to bring that to Berlin, when

1 your company has a lumber yard very close to Berlin
2 that it could backhaul other materials?

3 A. (D'Elia) The lumber company in Milan has nothing to do
4 with Brentwood. But -- so, I guess I don't follow your
5 thought.

6 Q. Well, I guess what I'm saying is, when backhauling
7 becomes important generally is due to economic savings.
8 And, I guess what I'm asking you is, is it going to
9 make sense in the future, especially when the building
10 industry picks back up, that that backhauling could
11 economically take place, bringing lumber back south
12 from the Milan facility?

13 A. (D'Elia) I guess I'm having a hard time following your
14 train of thought. We're producing lumber in Milan, and
15 we're going to haul the lumber down south?

16 Q. Correct.

17 A. (D'Elia) Well, that's a flatbed trailer. How am I
18 going to -- and then what do I do with it? Load it up
19 with bark or chips? It can't happen.

20 Q. Okay. So, getting back to shortened supply, my last
21 question for you.

22 A. (D'Elia) Okay.

23 Q. When, as you've acknowledged, prices tend to rise,
24 isn't it true the wood prices for Schiller will rise

1 higher than if the Laidlaw facility were not there, as
2 the two facilities would compete for fuel from shared
3 suppliers? In other words, Laidlaw will affect the
4 price of wood at Schiller, in contrast to your
5 supplemental testimony. Would you care to comment on
6 that?

7 A. (D'Elia) Laidlaw and Schiller will not be the only
8 facilities that are low on wood if supplies are tight.
9 So, no, I will not blame Laidlaw for the increase of
10 price of wood fiber, if the conditions in the woods are
11 not allowing wood to come out. There will be a lot of
12 other facilities looking for that same stick of wood.
13 In between Schiller Station and Laidlaw facility, there
14 will be pulpmills, sawmills, that have a lot more --
15 that will affect the price of wood a lot more than
16 Laidlaw affecting Schiller's.

17 MR. EDWARDS: Okay. Thank you. That's
18 all the questions I have.

19 WITNESS D'ELIA: Okay.

20 MR. EDWARDS: With the exception for
21 Mr. Eastwick.

22 CHAIRMAN BURACK: Very good. And, I
23 think what we're going to do is we're going to go through
24 all the questions I believe from Counsel for the Public

1 and any recross from the Joint Applicants, and then we
2 will go to a nonpublic session. Counsel for the Public.

3 MR. BROOKS: Okay. For the purpose of
4 making sure we're asking the public questions first, I'll
5 start with the wood questions, and then we'll get more
6 into the financial stuff in a few minutes. So, the
7 questions are for Mr. D'Elia.

8 BY MR. BROOKS:

9 Q. Give us the big picture of RCT. We've heard a little
10 bit about it tangentially today, about you have some
11 different facilities. Start with the big picture and
12 then I'll whittle down to the smaller picture.

13 Starting with, how big is RCT? Cousineau was
14 represented to us as being rather large. How big is
15 RCT? How many employees? Where are they?

16 A. (D'Elia) Okay. RCT is based out of Skowhegan, Maine.
17 He has there 75 trackers and 150 trailers. RCT employs
18 216 employees, 142 of which are New Hampshire
19 employees. He has facilities, is a partner with his
20 family with Milan Industries, Milan Sawmill, which is a
21 spruce mill. Its annual production is 65 million feet
22 of spruce lumber. He's partners with me at HHP. We
23 bought that company in 1989. We have 50 employees. We
24 produce 10 million board feet of hardwood lumber. We

1 have kilns. We have a pallet manufacturing facility.
2 We manufacture about 350,000 pallets a year. And, we
3 have a debarking and chipping operation, where we chip
4 150,000 tons of roundwood, sending it to 6 different
5 paper companies in New York and Maine. We also own a
6 small fleet of trucks. And, we have a mechanized
7 cut-to-length logging operation as well. We -- he also
8 has a bark holding yard in Brentwood, New Hampshire,
9 where we -- he brings down -- they process 150,000 tons
10 a year of bark and sells that into the wholesale
11 landscaping business.

12 The point of that was that he has
13 contracts with various spruce mills and paper companies
14 to move their bark product on a daily basis. And, over
15 the years, as he was trying to sell to other private
16 bark yards, they would essentially stop his incoming
17 trucks in the fall, when their bark season was done, so
18 -- and he just had to meet those commitments with his
19 contracts, so he purchased the land in Brentwood to
20 continue to meet those commitments. And, over the
21 years -- and we use the backhauls from the Henniker
22 chip plant to move our chips throughout New England.

23 We do supply various pulpmills, eight
24 pulpmills. And, at present, we do not move whole tree

1 chips. And, the biomass, when we're talking, the
2 biomass we move, it's bark.

3 Q. Okay. In terms of assets, and I think we went over
4 this before, but I think there's at least three
5 locations in Maine and four or so in New Hampshire.
6 You touched on a couple of those, Brentwood and the
7 other one.

8 A. (D'Elia) Yes.

9 Q. Is that basically the extent of the operation?

10 A. (D'Elia) That's the extent of the operation.

11 Q. Is there a presence in Canada?

12 A. (D'Elia) There is two trucking companies he owns in
13 Canada as well.

14 Q. Any facilities such as storage or timberland?

15 A. (D'Elia) He owns -- the company owns some timberlands,
16 yes. And, storage would be such as Brentwood.

17 Q. Can you repeat the statement that you made just a
18 couple of seconds ago about that you don't currently
19 haul, it sounds like you weren't currently hauling the
20 type of material that would be going to Laidlaw?

21 A. (D'Elia) No, we don't haul whole tree chips. We haul a
22 pulp quality chip to the pulp and paper industry.

23 Q. Okay. The same type of truck could haul both of them?

24 A. (D'Elia) The same type of truck hauls both of them.

1 Q. Do you focus -- I'm sorry -- mainly on other products
2 other than chips or is there a pretty significant mix
3 of chips in there?

4 A. (D'Elia) His trucks -- his trucking companies handles
5 mostly chips and bark, and some flatbed work to haul
6 lumber and pallets and so forth.

7 Q. I think that when the representative from Cousineau
8 testified previously, the concept was that there would
9 be a significant number of jobs in the North Country
10 created, anywhere from people in the field, on the
11 timberland, to truckers, and then all the ancillary
12 services they provide. I want to make sure that I
13 understand how the existing infrastructure and assets
14 of RCT might factor into that. In other words, if all
15 of the trucks that would be used are already owned by
16 RCT, and those drivers are already employed, there
17 might not be a big increase in the economic value to
18 the North Country. My understanding generally is that
19 you don't feel that's the case, but, if you can
20 elaborate on that, I would appreciate it.

21 A. (D'Elia) Yes. The present contracts we have with RCT
22 to move bark from the north down south and backhaul
23 chips to the pulp and paper industry will continue
24 going on. In respect to Laidlaw, Laidlaw will be --

1 the wood supply will be coming directly out of the
2 woods most of the time. And, like I said before, you
3 know, in mud season, you would be hauling, you know,
4 supplementing the local supply, which would be
5 diminished with -- with yards. So, the whole scope of
6 RCT is to really get the local, "local" being Coos,
7 Grafton, western Maine, Vermont, those operators to
8 produce the wood fuel and deliver directly to the
9 facility.

10 Q. Thank you. In certain agreements and certain
11 conditions, there have been essentially minimum
12 standards that have been set, in terms of how much must
13 come from the North Country and that type of thing.
14 Understanding that there is a limitation during mud
15 season, do you expect to just meet those or do you
16 expect to exceed those requirements for North Country
17 purchases?

18 A. (D'Elia) I think the North Country purchases will
19 increase as the plant goes along in years. I think
20 what will happen, as more and more people become
21 familiar, and the business plans can be established
22 where people know they have a steady market to go with
23 their product, they will make the appropriate
24 investment. You know, the wood contractors are -- have

1 an incredible entrepreneurial spirit, and they're not
2 afraid of spending money. The whole point of the wood
3 -- the Laidlaw facility, and because of the volume that
4 it's using, as well as the years that it will be going
5 on, will encourage the present contractors to upgrade,
6 and it will also bring others into the -- into the
7 field.

8 Q. Okay. There's kind of an inherent tension between the
9 economics of having more truckers employed, more timber
10 people employed in the North Country, and then
11 management of the resource asset, making sure we have
12 enough trees. And, that's something I think that we
13 struggled with kind of throughout this, which is to say
14 "please show us how you're going to increase the
15 economy of the North Country, but don't have any impact
16 on the resources in the North Country." So, --

17 A. (D'Elia) Yes.

18 Q. And, the question from the Town of -- from the City of
19 Berlin, which was, "some people who had "stopped
20 logging" might get back in?" I think the
21 representation was made by Mr. Richmond and by you
22 previously that, essentially, the biofuel for the
23 Berlin facility will be the lowest quality of the kind
24 of residual products, essentially might be treetops, it

1 might be some other residual product, that it won't
2 necessarily cause a lot of logging of the whole trees
3 that are there. But, then again, there is other
4 testimony that says "well, in fact, people will be
5 encouraged to -- there will be more of the cutting,
6 "marking trees", as you mentioned. So, can you just
7 explain what you envision the dynamics to be in the
8 North Country between the economic growth and the
9 management of the resources?

10 A. (D'Elia) Yes. You know, as a sawmill owner, and my
11 primary focus is purchasing sawtimber, we need as many
12 markets for the operators in order for them to survive,
13 for them to make a decent profit. With the -- yes. I
14 mean, the whole tree chips is not going to either make
15 a landowner wealthy or make a, you know, an operator,
16 on a stand-alone basis, just making whole tree chips,
17 is -- but it's part of the mix. Where he will be able
18 to get some extra money from that, from those
19 residuals. It will also allow for better forestry
20 management, because now you have a way of getting --
21 disposing of, getting off the job, off the site, the
22 undesirable trees. It will also, during that whole
23 process, you will be then processing and manufacturing
24 more, the jobber will be more pulpwood and more

1 sawlogs. So, for us, as a sawmill owner, you're always
2 -- you're always looking to get those residuals to come
3 in off the job. And, in a perfect job, they are
4 utilizing those three components, be it a sawlog, be it
5 a piece of pulpwood, as well as the biomass.

6 So, you know, so, there was always, you
7 know, for Berlin and the North Country has a history of
8 having pulpmills consuming large volumes of wood, and a
9 higher value wood was the pulpwood. This facility will
10 be utilizing the biomass, which is the whole tree
11 chips. So, it really enhances and increases the volume
12 of the other products that will be generated, be it the
13 pulpwood and the sawlogs for the sawmill industry.

14 Q. Okay. So, if we -- if a facility, like the proposed
15 Laidlaw Berlin facility, can use that less desirable
16 product that's there, the impact on, let's say, the
17 sawlogs and pulpwood, might the price actually decrease
18 from what it would have been or might the volume
19 increase, is that what your --

20 A. (D'Elia) Yes. It might. It will definitely change,
21 change the pricing. But, again, it depends on the
22 market. You know, another big difference between the
23 Laidlaw facility and a pulpmill, a pulp mill, there's a
24 lot of factors that affect the price of what they could

1 pay for roundwood. Could be the general economy,
2 whether people are buying paper or not, could be, you
3 know, the price of, you know, the value of the dollar,
4 whether they're providing imports. All that has an
5 effect on what they can afford to pay for the
6 roundwood. And, so -- as well as what their
7 inventories are.

8 The Laidlaw facility, I see it as a
9 little bit different, in that it's going to be
10 consistent, it will burn X amount of tons every day,
11 and it will need a steady supply of fiber, of whole
12 tree chips going in there. That adds a little bit of
13 continuity to the market a little bit, and that will,
14 you know, keep the prices stable.

15 Q. Thank you. I'm going to ask one more question, and
16 then I'll allow Peter Roth to follow up probably on
17 that same question. Which is, there is the facility in
18 Gorham right now, the Gorham mill.

19 A. (D'Elia) Yes.

20 Q. Can you describe what, if any, pressure the opening of
21 the Laidlaw facility might put on the Gorham mill?

22 A. (D'Elia) I don't think it will have any. Gorham,
23 again, buys purchased pulp to run through that
24 facility, so -- and they could buy that on the open

1 market. But it will have no effect on -- Laidlaw won't
2 have any effect on that price.

3 Q. So, you don't foresee a price pressure on the Gorham
4 mill based on the opening of the Laidlaw facility?

5 A. (D'Elia) No.

6 MR. ROTH: Okay. I have a number of
7 questions about managerial and technical capability.

8 CHAIRMAN BURACK: Attorney Roth, can you
9 just pull the microphone a little closer to yourself?
10 Thank you.

11 MR. ROTH: I have a few questions on
12 managerial and technical capability and the size of the
13 facility.

14 BY MR. ROTH:

15 Q. At the previous hearing last summer, there was a
16 question from one of the Committee members about the
17 net output for the facility for purposes of the
18 Interconnection Agreement. Is there a new net output
19 for the facility at this point that is being used by
20 ISO?

21 A. (Kusche) The answer to that is "yes."

22 Q. Last summer it was 58.7 megawatts. What is it now?

23 A. (Kusche) I believe it's 8.8 megawatts more.

24 Q. Okay.

1 A. (Kusche) We, in our application for an increase, the
2 gross increase was 9.1 megawatts. And, I will search
3 my documents here to get you the exact figure, but the
4 net increase was slightly less than that, of course,
5 and I believe it was 8.8. But I'll get you the exact
6 figure.

7 Q. So, if my arithmetic is correct, 67 and a half?

8 A. (Kusche) That does sound right.

9 Q. Okay. Now, --

10 A. (Kusche) Yes, 8.8 megawatts net increase.

11 Q. All right.

12 A. (Kusche) 67.5 is the new net electrical output. Thank
13 you.

14 Q. Thank you. And, do you have an average capacity
15 figure? Average capacity factor for the plant now, a
16 new one?

17 A. (Kusche) No, I don't -- can you give me the units that
18 you're --

19 Q. In megawatts.

20 A. (Kusche) In megawatts? Well, we take -- we take the
21 net megawatts, and, in our projections for annual power
22 production, we then multiply that by the plant factor,
23 which is a combination of scheduled outage hours and
24 unscheduled outage hours. And, those assumptions have

1 not changed, those multipliers, from our previous
2 testimony. So, we're now predicting, I believe, or
3 projecting just over 500 gigawatt-hours a year in
4 annual energy production. I believe it's 504.

5 Q. Okay. Now, with respect to the Delta Power contract,
6 when we were here last summer, there was -- we had
7 testimony from Mr. Strickland [Strickler?] from
8 Homeland Renewable and Fibrowatt. And, I note that the
9 Committee determined in its decision that the Applicant
10 essentially relied upon the expertise of Fibrowatt and
11 Homeland for its managerial and technical expertise to
12 operate the facility. And, we don't have them anymore.
13 And, I notice that we don't have a witness from Delta
14 Power. So, we're -- essentially, you are the witness
15 for all of the aspects of managerial and technical
16 capability, except that you aren't actually going to be
17 operating the plant, is that correct?

18 A. (Kusche) That's correct.

19 Q. Now, in your testimony, you said that you believed that
20 "Delta Power Services is highly qualified and has the
21 technical and managerial capability to operate." What
22 do you base that on?

23 A. (Kusche) Well, directly, I base that on their company's
24 involvement in operating power facilities in the United

1 States over the years. They're currently managing the
2 operations of I believe it's nine power facilities in
3 the United States. Four of them are solid fuel. They
4 have -- they're operating a 45-megawatt biomass plant
5 called the "Cadillac plant". They have entered into an
6 agreement to operate another biomass plant, which is
7 under construction. And, then, there will be ours.
8 Delta Power Services is a subsidiary of Babcock &
9 Wilcox, who is the EPC contractor for our Project.
10 And, you know, we believe that that relationship is
11 going to benefit the Project, in that there will be a
12 relatively seamless transition from the EPC contractor
13 to the operations, in that Delta Power Services will be
14 providing personnel at the Project during construction.
15 At key phases, they will be bringing people in to
16 witness and participate in bringing systems online,
17 testing them, commissioning them. And, it's an ideal
18 way to set your project up for efficient operations.

19 Indirectly, my opinion that Delta Power
20 Services is qualified for this is based upon my 20
21 years of experience actually operating a biomass plant.

22 Q. Okay. Before you go there, I was just trying to
23 understand what you based your decision that or your
24 opinion that they were "highly qualified". And, I

1 understand you did a good job of reciting what was in
2 your testimony and in the motion, but I'm trying to
3 understand where you get this, this information. Now,
4 attached to the motion was a document from -- looks
5 like it was a brochure or something from the -- well,
6 let's just, it's Exhibit Number 11, I believe. Is this
7 where you get your information about Delta Power?

8 A. (Kusche) Well, brochures certainly have information.
9 But we have been -- we have been discussing the
10 operations of this Project for months now, not only
11 with Delta Power Services, but we've also had
12 discussions with other nationally recognized firms that
13 provide these services. And, we've selected Delta
14 Power Services from among several, because we felt that
15 they were best qualified for the Laidlaw Project.

16 Q. Okay. All right. In terms of your experience with
17 Delta Power Services directly, have you, in your years
18 of experience operating a power facility, have you
19 ever, yourself, employed Delta Power Services before?

20 A. (Kusche) No, I have not.

21 Q. Okay. And, I noted that there's also a document
22 described as a "Resumé of Mr. Sessler". Have you met
23 Mr. Sessler?

24 A. (Kusche) I have not personally met Mr. Sessler.

1 Q. Okay. Have you visited a Delta Power Services run
2 plant?

3 A. (Kusche) I have not.

4 Q. So, you didn't go to the Cadillac facility in Michigan?

5 A. (Kusche) No, I did not.

6 Q. Okay.

7 MR. NEEDLEMAN: Mr. Chairman, Peter, I'm
8 sorry to interrupt. I should have mentioned earlier that
9 there is a representative of Delta Power here today, Don
10 Driskill, who is the President of Delta Power, is in the
11 room. And, if the Committee wishes to hear from him at
12 any point, he is certainly available. Likewise, a
13 representative of Babcock & Wilcox and Waldron are also
14 here, if there are any questions directly for them.

15 MR. ROTH: I would object to them being
16 introduced as witnesses at this point. This is, you know,
17 the Applicant has had this burden since at least the
18 beginning of March, when they filed their Motion. They
19 have not submitted any prefiled testimony of these people
20 or given any of us an opportunity to conduct discovery or
21 prepare for cross-examination.

22 MR. NEEDLEMAN: I'm not offering them as
23 witnesses at this point. I'm simply saying they're
24 available, if the Committee wishes to hear from them.

1 CHAIRMAN BURACK: I understand that,
2 Attorney Needleman. Thank you. You may proceed, Attorney
3 Roth.

4 MR. ROTH: Thank you.

5 BY MR. ROTH:

6 Q. With respect to Delta Power Services and its
7 employment, I noted in the brochure that they indicated
8 that they took a unionized facility and made it
9 non-unionized. Do you know of any particular
10 perspective or outlook that Delta Power has with
11 respect to employing union employees?

12 A. (Kusche) No. Specifically, I don't know what their
13 corporate policy is on that. But I will note that
14 their parent company, the construction arm, which is
15 going to be doing the EPC contract work at Berlin, is a
16 union firm. And, --

17 Q. Okay. Fair enough. Do you know of anything in your
18 agreements with Delta Power Services that requires them
19 to hire people locally?

20 A. (Kusche) Yes. There is an understanding and an intent,
21 which has been emphasized from the very beginning, that
22 they will use best efforts to hire all local people.

23 Q. Is that in the agreement with Delta Power?

24 A. (Kusche) I would have to check the agreement to answer

1 that.

2 Q. Okay. If, at some point, when we take a break, if you
3 could do that?

4 A. (Kusche) Sure.

5 Q. I would appreciate that.

6 A. (Kusche) I would be happy to.

7 Q. All right. Now, I noted that in the document that I
8 read that there is a -- apparently, there is now in
9 existence something called the "Ash Disposal Agreement"
10 from April. Has that been finalized?

11 A. (Kusche) Yes, it has.

12 Q. And, who's that with?

13 A. (Kusche) That's with Resource Management, Inc., a New
14 Hampshire firm.

15 Q. And, what's the -- what's going on there? How are they
16 -- what's the -- how are they disposing of the ashes?

17 A. (Kusche) They have a Beneficial Use Program.

18 Primarily, that the fly ash from the Project will be
19 utilized in land spreading, agricultural land spreading
20 as a soil supplement. Very commonly done these days
21 with biomass ash. And, that's the intent of their
22 program.

23 Q. Does the Ash Disposal Agreement take care of all of the
24 ashes, the fly ash from the facility?

1 A. (Kusche) It does, 100 percent of the fly ash.

2 Q. Okay. And, are they responsible for taking the ash,
3 the fly ash from the facility to their own location?

4 A. (Kusche) Yes, they are. They are responsible for
5 bringing -- providing the trucks, which will come to
6 our facility, and be loaded at our facility, and
7 utilizing the ash in their Beneficial Use Programs.

8 Q. Okay. And, do they understand that there are certain
9 requirements under the Certificate that have to be met
10 with respect to ash disposal and removal?

11 A. (Kusche) They do.

12 Q. And, where is their facility? Will they be taking the
13 ashes outside of the State of New Hampshire?

14 A. (Kusche) I believe most of them will be utilized in New
15 Hampshire. However, Maine also has a Beneficial Use
16 Program for the agricultural spreading for biomass.
17 So, we have not limited where they can apply this, this
18 ash as a beneficial use to the State of New Hampshire.

19 Q. Moving onto the wood supply study. In another
20 document, I had noted that there is a requirement to
21 provide a final wood supply study by LandVest. Is
22 there another wood supply study being conducted by
23 LandVest right now?

24 MR. NEEDLEMAN: I'm sorry, Peter. What

1 are you referring to?

2 MR. ROTH: In one of the note purchase
3 agreements there was a reference to a requirement to
4 provide a "final wood supply study by LandVest". And, I'm
5 asking if there is another study underway that's going to
6 produce a document, a report?

7 BY THE WITNESS:

8 A. (Kusche) I am not aware of that. But I can certainly
9 check and let you know later today.

10 MR. ROTH: Okay.

11 CHAIRMAN BURACK: Attorney Roth, may I
12 just interrupt you for a moment. What is the specific
13 document you're referring to that you say has this mention
14 in it?

15 MR. ROTH: It's one of the two note
16 purchase agreements that are in draft form that I was
17 provided confidential copies of. I do not intend to
18 introduce those as record here.

19 CHAIRMAN BURACK: Thank you.

20 MR. ROTH: If I had to hazard a guess, I
21 would say it was the \$200 million note purchase agreement.

22 BY MR. ROTH:

23 Q. Okay. At this point, when we were here before, we had
24 Mr. Bravakis and Mr. Bartoszek and yourself and

1 Mr. Strickland [Strickler?]. And, I think it was
2 pretty well understood by everyone that that was going
3 to be kind of the senior management team. And, now,
4 Mr. Bartoszek and Mr. -- Mr. Bartoszek and Mr. Bravakis
5 are no longer here. And, I don't see them in the room
6 today, although I could be mistaken of. What has
7 become of those individuals and what role will they
8 play going forward in the future?

9 A. (Kusche) Mr. Strickler was a representative of
10 Homeland. And, as we've described, Homeland is not
11 going to be involved in the Project going forward.
12 Mr. Bravakis and Mr. Bartoszek, as I think we alluded
13 to in our previous testimony, the interests of Laidlaw
14 Berlin BioPower were purchased by the Project. And, it
15 was contemplated that the three of us, who were I think
16 represented as the developers of this Project, our
17 roles were going to be evolving and changing and being
18 minimized as the Project evolved from the development
19 stage, to the financing and construction and,
20 ultimately, the operation phase. Mr. Bartoszek,
21 Mr. Bravakis, and myself have consulting agreements
22 with Laidlaw Berlin BioPower. We continue to provide
23 services as necessary to support the continued
24 development of the Project as it moves into the final

1 permitting and construction stage. They are readily
2 accessible and available to the Project. But it's
3 anticipated that their roles as consultants will
4 diminish and, ultimately, probably end, as other people
5 and other companies take on the roles that are
6 necessary for construction and operation.

7 Myself, I have joined Cate Street
8 Capital as an employee. And, so, I will be continuing
9 with my involvement in the Project, hopefully through
10 20 years of -- maybe not 20 years, but through
11 construction and into the operation phase.

12 So, they are still available, they're
13 still contributing, and they're still engaged in the
14 Project, as needed.

15 Q. When's the last time you spoke with either of them?

16 A. (Kusche) Personally spoke? By voice, it's been a
17 couple of months since I've spoken to them. But
18 there's been email correspondence.

19 Q. Thank you. Who can the Committee and the public rely
20 upon to understand as the senior management of this
21 Project, both in the construction phase, and then in
22 the operational phase? Who's the face of this Project?

23 A. (Kusche) Well, it's a big project, so I don't think
24 there's any one face. But Cate Street Capital is the

1 managing company for this Project. It has been since
2 they purchased the real estate in late 2008, I believe
3 it was, and will continue to be. And, so, if anyone
4 wants to speak to someone about the Project, and the
5 appropriate contact is not Delta Power Services at the
6 site, and they want to talk to Cate Street Capital,
7 they'll pick up the phone and ask for either myself or
8 Chuck Grecco, who's on the Advisory Board, who's in
9 Portsmouth, New Hampshire, working with me directly.

10 Q. Okay. Now, in one of the documents that was provided
11 to us, and I don't believe it's confidential, and I
12 haven't provided a -- I haven't created an exhibit for
13 it, is the "Draft Decommissioning Plan". Did you
14 prepare this document?

15 A. (Kusche) Personally, I did not, no.

16 Q. Do you know who did?

17 A. (Kusche) It was a combination of myself, Chuck Grecco,
18 and Dammon Frecker, all Cate Street Capital employees.

19 Q. Okay. When did you create this document, the one that
20 was provided to us the other day?

21 A. (Kusche) I don't know the exact date, but it's a good
22 month, month and a half old, I believe.

23 Q. Okay.

24 A. (Kusche) It has been reviewed by the City.

1 Q. It has not?

2 A. (Kusche) It has been --

3 Q. Oh, it has been.

4 A. (Kusche) -- submitted to the City and reviewed, and
5 we're making some final modifications, and we'll be
6 resubmitting it to the City.

7 Q. And, I have to say it struck me as rather far from
8 being final. Is that how you would view it?

9 A. (Kusche) Well, no, actually. The City had very few
10 comments or questions to this. There's, as I remember,
11 a few details that needed to be added. But I think
12 we're very close, actually.

13 Q. Okay. So, at this point, based on this draft, I don't
14 see any information about what the decommissioning
15 costs and funds would be or what the financial
16 assurance would be for it. Is that correct?

17 A. (Kusche) That's correct. And, that's what we're --
18 that's what needs to be added, which we're doing now.

19 Q. Okay. When do you expect to have that finalized?

20 A. (Kusche) I would expect that that will be finalized
21 prior to -- certainly, according to the terms and
22 conditions of our Certificate, it will be finalized
23 before we start construction. But I would guess that
24 this document can be finished within days, if not

1 weeks.

2 Q. Okay.

3 A. (Kusche) Weeks, if not days.

4 Q. Assuming you get what you're looking for here today,
5 when do you think you'll begin construction?

6 A. (Kusche) Well, we are still hopeful that we'll be
7 meeting a June construction loan closing. And, --

8 FROM THE FLOOR: Could you speak into
9 the mike.

10 WITNESS KUSCHE: I'm sorry.

11 BY THE WITNESS:

12 A. (Kusche) We're still hopeful that we're going to meet a
13 June, I can't give you a specific date, but a June
14 construction loan closing, and begin construction
15 activities immediately thereafter.

16 BY MR. ROTH:

17 Q. Beginning construction how long thereafter?

18 A. (Kusche) Nearly immediately thereafter.

19 Q. Okay.

20 A. (Kusche) Certainly, we'll begin mobilization efforts
21 with the EPC contractor.

22 Q. With the modifications that you're proposing, how much
23 of the existing facility is going to be used?

24 A. (Kusche) The physical --

1 Q. Yes.

2 A. (Kusche) Well, a great deal of what you see there will
3 be utilized. The 13-story building contains a recovery
4 boiler, a black liquor boiler, and most of that will be
5 utilized in the new biomass boiler. It will be
6 modified, of course. And, the adjacent building, which
7 houses the control room and motor control center will
8 also be utilized. And, a couple of adjacent buildings
9 will be constructed, one to house the steam turbine
10 generator. So, the majority of what you see there
11 today will be utilized in the new Project.

12 Q. Okay. I just wanted to know whether -- if somehow the
13 modification had obviated the need for maintaining the
14 stuff that's there now. And, you've answered my
15 question. Thank you. Now, when we were here last
16 summer, and as found in the Committee's decision, the
17 all-in cost of the plant, when it was discussed last
18 year, was \$167 million, and that included the -- I
19 believe it included the various reserve accounts and
20 the like. Do you recall that figure?

21 A. (Kusche) I do.

22 Q. All right. And, what is that figure today?

23 A. (Kusche) If I may, I'm going to ask my colleague, Matt
24 Eastwick, to address questions on the financial aspects

1 of the Project.

2 A. (Eastwick) The total project cost is approximately
3 228 million.

4 Q. So, that's all-in, all the reserve accounts, and
5 everything that you need?

6 A. (Eastwick) No. That does not include reserve accounts,
7 closing fees, or any interest reserve accounts.

8 Q. Okay. Just so we're talking about the same, according
9 to the findings that the Committee made last fall, in
10 November, that the cost of construction would be
11 110 million, and that it then said that the revised
12 estimate of the total project cost was 167 million.
13 And, 167 is still a long ways from 228, and I want to
14 make sure we're comparing the right figures. And, what
15 -- is it your understanding that the 167 included all
16 the reserve account and the interest or was the 167
17 just the construction costs, and excluding financing
18 costs?

19 A. (Eastwick) My understanding is that the \$167 million
20 number is directly comparable to what is now the
21 \$228 million number.

22 Q. Okay. And, if you include the financing costs and the
23 like, what is the cost that you're looking at, in
24 addition to the -- so, on top of the 228, where does

1 that take you upward to?

2 A. (Eastwick) Approximately 274 million.

3 Q. 274. And, what was the comparable figure last fall?

4 A. (Eastwick) I don't know.

5 Q. Okay. Now, if we just stick with the 167 to 228,
6 that's still a pretty significant increase, isn't it?

7 A. (Eastwick) Yes.

8 Q. And, what do you -- to what do you attribute that
9 significant increase to?

10 A. (Eastwick) There have been a number of changes in the
11 construction scope. And, I'm not the person who has
12 been negotiating those contracts, so I can't give you
13 all of the detail. But my understanding is that there
14 was initially estimates that have now become true bids
15 on various costs. And, that we've also been able to
16 improve the efficiency of the Project and increase the
17 energy output, based on some modifications, which have
18 led to increases in costs.

19 Q. And, if you were to take a stab at estimating the -- or
20 making a guess as to the breakdown, what is -- how much
21 of the increase is attributable to the greater
22 efficiency versus the greater clarity in the
23 estimation?

24 A. (Eastwick) I'm really not the expert in all of that

1 area, but we've been able to increase the output by
2 approximately 7 percent. And, so, I'll give you one
3 example. We're using a new turbine, rather than a used
4 turbine, which has, I believe, an increased cost of
5 about \$10 million.

6 Q. Okay. Do you expect to see any further increases in
7 the cost of this going forward?

8 A. (Eastwick) I don't believe so.

9 Q. Okay. And, in terms of the financing costs, 228 over
10 274, roughly \$50 million in financing costs. Is that
11 correct? I mean, what's --

12 A. (Eastwick) A little less than that.

13 Q. Order of mag --

14 A. (Eastwick) I think about 46, 47 million.

15 Q. Okay. Is that typical for a financing of this size?

16 A. (Eastwick) Yes, it is.

17 Q. Okay. And, not all of that is just money out the door,
18 correct? Some of that is prepayment of interest, is
19 that right?

20 A. (Eastwick) There's three main categories. One is to
21 pay interest during construction. So, we -- the
22 Project will not be generating revenue to service any
23 debt during the construction period. So, we need to
24 create at the financial close an account that will pay

1 interest on our debt during the construction period.
2 There's also the need to create various reserve
3 accounts that lenders require, such as a Debt Service
4 Reserve Account, that will be money that's held in
5 escrow to pay for the various needs of the ongoing
6 Project. And, then, there's also then closing costs
7 and fees associated with the transaction.

8 Q. And, how much goes, and I don't mean exact dollars, but
9 I assume that you owe a monthly payment, you'll owe a
10 monthly payment to your note holders or perhaps the
11 agent for the note holders?

12 A. (Eastwick) There will be interest paid on a quarterly
13 basis.

14 Q. Quarterly, okay. How many quarters of payments will be
15 in the Debt Service Reserve Account?

16 A. (Eastwick) Right now, we are reserving, I believe, six
17 months of debt service reserve.

18 Q. Six months?

19 A. (No verbal response).

20 Q. Now, in the proceedings last summer, and in the
21 decision by the Committee last fall, there was evidence
22 and a finding that there would be benefits to the
23 community from the New Market Tax Credits through their
24 allocation. Are you familiar with that concept?

1 A. (Eastwick) Yes.

2 Q. And, for example, on Page 44 of the decision, it says
3 "Laidlaw anticipates that 2.25 million of the New
4 Market Tax Credits will be allocated to a community
5 loan fund intended to benefit the community through the
6 New Hampshire Business Finance Authority, Seedco
7 Financial Services, and CEI Capital Management serving
8 as allocatees. And, then, further, "It is also
9 anticipated that \$500,000 of this credit will be
10 distributed to the City of Berlin."

11 Now, under your current New Market Tax
12 Credit lending and borrowing, I guess, do you still
13 expect that those targets, the 2.25 million and the
14 500,000 for the City will be met? Are those
15 allocations still in there?

16 A. (Eastwick) I have not personally been directly involved
17 in that level of detail for the allocation, but that is
18 my understanding.

19 Q. Okay. It's your understanding. But are the allocatees
20 the same?

21 A. (Eastwick) For the transaction, yes.

22 Q. And, are you aware of any change that would suggest
23 that these allocations for the benefit of the community
24 loan fund and the City of Berlin have changed?

1 A. (Eastwick) Not that I'm aware.

2 Q. Okay. If there were such a change, would you be aware
3 of it?

4 A. (Eastwick) That's tough to tell. I've not been
5 directly involved in that part of the NMTC process.

6 Q. Okay. So, and I don't want to put words in your mouth,
7 but is it fair to say that you really can't assure
8 anybody here today that those allocations and those
9 benefits to the community are still there?

10 A. (Eastwick) No. But I can confer with our entire team
11 and provide a response to that.

12 Q. Okay. Thank you. That would be good. Now,
13 Mr. Eastwick, there are a couple of things about your
14 resumé that I wanted to ask about. And, the first one
15 is, you have -- you noted at the end that you have a
16 "U.S. and a European Union Passport". That's kind of
17 an interesting thing to put on your resumé. And, if
18 it's not too personal, why do you have an EU Passport?

19 A. (Eastwick) I was resident and working in the U.K. for
20 several years. And, based on family, I was able to
21 obtain a passport.

22 Q. And, is that seen as a resumé-building item, to have an
23 EU Passport? It looks cool, I'll give you that.

24 A. (Eastwick) In a lot of cases, having the ability to

1 work without a visa abroad is seen as a positive.

2 Q. Okay. I would also note, and I say this with some
3 discomfort, that you have had four jobs in five years,
4 and just over a year of unemployment since 2006. Now,
5 you're at Cate Street now just over a year. Do we have
6 reason to expect that you are going to be here a year
7 from now, so that the testimony that you give and the
8 assurances that you give everybody, when we turn around
9 and we say "Well, where's Cate Street? Where's
10 Mr. Eastwick?", are going to be met?

11 A. (Eastwick) I have every expectation of working for Cate
12 Street.

13 Q. So, you don't have any plans now to change jobs?

14 A. (Eastwick) None at all.

15 MR. ROTH: Okay. That's good. Thank
16 you. I have other questions, which I think, Mr. Chairman,
17 are in the realm of confidential, and I have a number of
18 exhibits. So, at this point, I'd first like to move the
19 exhibits into evidence. And, I have spoken both with
20 Attorney Needleman and Mr. Edwards, and neither of them --
21 unfortunately, I didn't confer with Attorney Schnipper,
22 but I'd be happy to do so and obtain his assent to their
23 admission, but Attorney Needleman and Mr. Edwards have
24 both agreed to the admission of these documents. Some of

1 them are confidential documents that were provided to
2 Counsel to the Public under confidentiality terms.

3 CHAIRMAN BURACK: Yes, I think, and I
4 don't know what the origin of these documents is,
5 certainly, if they're confidential documents, then the
6 expectation is that they are different from the documents
7 that are already covered by the protective order that I
8 announced earlier this morning that I have granted. We
9 would need a motion from one or more of the parties to
10 grant a protective order with respect to those
11 confidential documents, if, in fact, that is the desire
12 and the intention of the parties. I would need an
13 opportunity to basically understand what the nature of the
14 documents was, so that I could then make a ruling on that,
15 on that motion. Attorney Needleman.

16 MR. NEEDLEMAN: Yes. Thank you. I
17 conferred with Peter beforehand, and we have no objection
18 to the documents being introduced. Several of them are
19 documents we consider confidential, but we consider them
20 confidential because they're financial documents that
21 contain sensitive business information. They're not
22 documents that would normally be released to the public,
23 and, if they were released to the public, would cause harm
24 to the Joint Applicants. And, it's for those purposes

1 that we would request that those set of financial
2 documents be treated as confidential.

3 I would also note that both the City and
4 Mr. Edwards have signed nondisclosure agreements with
5 respect to those documents. And, so, to the extent they
6 are going to be discussed, they are certainly entitled to
7 be present for that.

8 CHAIRMAN BURACK: I think it would be
9 helpful if I could just see the documents first, just
10 review them and examine, if I could please.

11 (Atty. Roth distributing documents.)

12 MR. ROTH: Mr. Chairman, I'm presenting
13 you documents marked as "Public Counsel 2", "3", "3.1",
14 and "6".

15 CHAIRMAN BURACK: Thank you.

16 (Short pause.)

17 CHAIRMAN BURACK: Okay. Thank you, all.
18 Let's resume here. Let me first identify what these
19 documents are.

20 The first is, this is Public Counsel's
21 Exhibit Number 2, it's entitled "Confidential Response to
22 Number 8". And, this appears to be an identification of
23 the source of funds, in terms of both debt and equity, for
24 the project, including interest rates, interest rate

1 information.

2 The second document is Public Counsel's
3 Exhibit 3. It is a financial spreadsheet, in the upper
4 left-hand corner reads "Berlin Station, LLC Summary".
5 The date is "May 11, 2011". And, it covers a -- it's a
6 pro forma covering Years 1 through Year 20 of operation of
7 the facility.

8 The next document is Public Counsel's
9 Exhibit 3.1. Again, in the upper left-hand corner reads
10 "Berlin Station, LLC". The caption is "Summary - Assuming
11 Market Revenue". The date is "May 13, 2011". And, this,
12 again, is a pro forma covering the Year 1 through Year 20.

13 The next document is Public Counsel's
14 Exhibit 6. This is entitled "NewCo Energy, LLC (a
15 Development Stage Enterprise) Balance Sheets As of
16 December 31, 2009, 2010 and April 30, 2011 (unaudited,
17 management prepared)". So, again, this is a balance
18 sheet. Having had an opportunity now to review all of
19 these documents, it's my determination that these are, in
20 fact, records of a financial nature that would be
21 customarily entitled to be treated as confidential
22 documents pursuant to RSA 91-A. So, I will amend the
23 protective order that I indicated earlier that I would be
24 issuing to include these additional documents.

1 MR. NEEDLEMAN: Thank you.

2 MR. ROTH: Thank you, Mr. Chairman. I
3 would suggest, at this point, that we take a 5 or 10
4 minute recess, so that I can just prepare document
5 packages for each of the Committee members and parties
6 here off the record.

7 CHAIRMAN BURACK: Thank you. Just to be
8 clear here, it's not your intention to ask questions about
9 these particular documents at this moment, not until we go
10 into a nonpublic session, is that correct?

11 MR. ROTH: That's correct.

12 CHAIRMAN BURACK: Okay. Here's what I'm
13 going to suggest that we do here. It's five minutes of
14 12:00 right now. I'm going to suggest we take a very
15 brief break, just a comfort break. And that -- do you
16 have any additional questions, Counsel for the Public, for
17 these witnesses in -- that should be asked in the public
18 session?

19 MR. ROTH: I don't think so. I tried to
20 do those questions that were public questions already.
21 And, I think I've got it now where I have a relatively
22 manageable number of confidential questions.

23 CHAIRMAN BURACK: Very good. Okay.
24 What I'm going to suggest we do then is take a very brief,

1 say about a five minute comfort break. We come back and
2 give the Committee members an opportunity to ask their
3 questions in public session of the panel. We will then,
4 when we've completed that, we will take a lunch break, and
5 we'll determine the duration once we've gotten through the
6 Committee's questions. And, immediately upon return from
7 the lunch break, we would then entertain a motion from a
8 Committee member to go into a nonpublic session,
9 specifically for the purpose of being able to ask
10 questions about the confidential documents.

11 Once we have completed that nonpublic
12 session, we'll then come back to public session. We will
13 have a motion to seal the transcript of that portion of
14 the proceeding, and then we will then proceed to the
15 remaining portions of the adjudicatory hearing itself.
16 Whether we will get to deliberation today, I do not know
17 at this time.

18 So, that's how I propose to proceed, if
19 that meets with no objection from any of the other
20 parties?

21 (No verbal response)

22 CHAIRMAN BURACK: Okay. Why don't we
23 take, I'm looking at the clock at the back of the room
24 here, it's almost noon by that clock, why don't we try to

1 be back here by five minutes past 12:00, if we could
2 please.

3 MR. ROTH: Thank you.

4 (Whereupon a recess was taken at 12:00
5 p.m. and the hearing reconvened at 12:13
6 p.m.)

7 CHAIRMAN BURACK: Thank you all for your
8 cooperation in keeping that break as brief as we
9 reasonably could. Before we begin with questions for the
10 witnesses from the Committee, I just want to note that we
11 have received now several different exhibits, and I just
12 want to list what we've received now as members of the
13 Committee. We've received Counsel for the Public's
14 Exhibit 1, which is a set of responses to data requests of
15 Counsel for the Public, provided by Berlin -- or, Laidlaw
16 Berlin BioPower, LLC, and Berlin Station, LLC. We also
17 have now received copies of the Counsel for the Public's
18 confidential exhibits, Exhibits Number 2, 3, 3.1, and 6.
19 We also have received another exhibit that is not labeled
20 as a confidential exhibit, this is Counsel for the
21 Public's Exhibit 5, which is entitled "Berlin Station
22 Capital Structure", and I believe is similar to a document
23 that was submitted as part of some of the prefiled
24 testimony, but I'm not sure I can identify it's precise

1 location. Actually, it is similar to or based upon the
2 Exhibit 5 to the original filing, the Joint Motion of
3 Laidlaw Berlin BioPower, LLC, and Berlin Station, LLC.

4 So, with that, again, just a reminder,
5 that we will hold any questions relating to the
6 confidential documents until a nonpublic session that we
7 expect to hold immediately after a lunch break. We have
8 also now received copies of Applicant's Exhibit 3, which
9 is the Biomass Fuel Supply Agreement. And, again, we will
10 reserve questions regarding that document until our
11 nonpublic session.

12 DIR. SCOTT: Mr. Chair, just to clarify.

13 CHAIRMAN BURACK: Yes.

14 DIR. SCOTT: Public Counsel Exhibit 5,
15 is that confidential?

16 CHAIRMAN BURACK: Counsel for the Public
17 Exhibit 5 is not a confidential document.

18 DIR. SCOTT: Thank you.

19 CHAIRMAN BURACK: Yes, Director Muzzey.

20 DIR. MUZZEY: And, what about 4?

21 CHAIRMAN BURACK: I'm sorry, did I
22 overlook that?

23 DIR. MUZZEY: Well, I just may have not
24 heard you.

1 DIR. MORIN: No, I didn't hear it
2 either.

3 CHAIRMAN BURACK: I'm sorry. I did not
4 see 4 in the pack. Counsel for the Public Exhibit 4 is
5 also not a confidential document. It appears to read at
6 the top, though it's difficult to read it with the
7 background, "Direct Development Costs". Can one of the
8 parties help us in understanding what --

9 MR. ROTH: Yes. I'm sorry. The
10 photocopying blurred out the dark text in the dark bars on
11 the top and the bottom. It says "Direct Development Costs
12 (as established in January 2011)". And, the bottom is a
13 total of "22,521,446".

14 DIR. SCOTT: Can you repeat that?

15 CHAIRMAN BURACK: I'm sorry. Let me ask
16 you to repeat those one at a time please.

17 MR. ROTH: All right.

18 CHAIRMAN BURACK: Would you read us just
19 the top bar first.

20 MR. ROTH: The top bar says "Direct
21 Development Costs (as established in January 2011)".

22 CHAIRMAN BURACK: Okay, just a moment
23 please. January 2011. And, what is the bottom blacked
24 out bar read?

1 MR. ROTH: The bottom says "Total:
2 \$22,521,446.00".

3 CHAIRMAN BURACK: Thank you. So, again,
4 that Counsel for the Public's Exhibit 4 is also a public
5 document. That is, it's not a confidential document. All
6 right. Commissioner Ignatius will be rejoining us
7 shortly, but we will proceed in the meantime with
8 questions of the witnesses from members of the panel. Who
9 would like to start? Mr. Harrington.

10 MR. HARRINGTON: Just I'm going to
11 direct these to the panel, and the most appropriate person
12 should answer them for the most part. There was a couple
13 of questions I had directly for Mr. Kusche.

14 BY MR. HARRINGTON:

15 Q. You were talking about the approval process of the
16 revised interconnection agreement. Have you received
17 an approved I-39 document from the ISO on that? It
18 sounds like you did by the way you described it, but
19 you didn't say one way or the other.

20 A. (Kusche) "I-39", can you describe that?

21 Q. That's the basically "do no harm" document, that the
22 interconnection, as proposed, will not harm the grid.

23 A. (Kusche) We have received the Draft System Impact Study
24 report.

1 Q. Okay.

2 A. (Kusche) That's all we've received at this point.

3 Q. Okay. And, then, just for the record, I guess a
4 correction. It appeared that you said that the
5 "Reliability Committee approval will happen", it was
6 almost like it was automatic. And, I think what you
7 were referring to was that you believe or someone told
8 you that it would probably happen, but, I mean, it
9 obviously won't occur until the Committee votes?

10 A. (Kusche) Okay. Yes, let me clarify that. I've had
11 extensive conversations with ISO-New England staff,
12 more than one individual, the Project Manager, as well
13 as others. And, they have represented to me that there
14 should be Task Force approval and Reliability Committee
15 approval, because --

16 Q. That's their opinion.

17 A. (Kusche) -- because there is absolutely no impacts or
18 effects shown by this incremental increase.

19 Q. Okay. Thank you. I just wanted to clarify that.

20 A. (Kusche) And, if you don't mind, I mean, I can actually
21 read the very short conclusion of the System Impact
22 Study, which states exactly what you're referring that
23 I-39 would say, which is that the studies have
24 indicated that there is no adverse effect to the

1 transmission system or the facilities of
2 interconnection transmission owner.

3 Q. Okay. Thank you. That's sufficient, I think.

4 A. (Kusche) Okay.

5 Q. I'm not sure, the gentleman, D-E-l-i-a?

6 CHAIRMAN BURACK: D'Elia.

7 WITNESS D'ELIA: D'Elia.

8 BY MR. HARRINGTON:

9 Q. D'Elia, okay. I want to make sure I got that right.
10 You had mentioned something about, when you were
11 talking about the sustainability agreement conditions,
12 that "Forest rangers would be going in." And, I'm just
13 wondering, what forest rangers are you talking about
14 and going in where?

15 A. (D'Elia) The forest -- well, there is a -- I believe
16 the State has -- the State has forest rangers, and they
17 do check operations.

18 Q. So, if it was the logging that would be done on State
19 land, would have State --

20 A. (D'Elia) On private lands as well.

21 Q. They go into --

22 A. (D'Elia) If there is violations, the State will go onto
23 the site, yes.

24 Q. Okay. All right. I just wasn't clear about that.

1 And, there was, just so it's clear on the -- there is,
2 obviously, a sustainability condition to have that,
3 there's a bunch of conditions listed. Who is going to
4 be responsible for the auditing and enforcement of the
5 conditions of the sustainability conditions?

6 A. (D'Elia) Well, the operator first has to sign in his
7 contract that's going to supply wood that he
8 understands the sustainability clauses that are in
9 there. Other than that, there will, of course, be
10 check -- you know, there will be people on the road,
11 you know, the staff will be on the road, because you
12 check on your suppliers.

13 Q. Okay. Excuse me. When you say "staff", you mean your
14 staff?

15 A. (D'Elia) Our staff, RCT's staff for Laidlaw that are
16 responsible for wood into the facility. So, I suspect
17 that it will be -- their eyes will be looking at the
18 job, as well as, I'm sure, if there is a problem, you
19 know, other sources can call it in as well.

20 Q. Okay. Because, I mean, it appears that we have, and
21 I'll use the term "Laidlaw" for lack of a better
22 definition right now, or I guess it would be "Laidlaw
23 Berlin BioPower", they set -- they are getting the
24 condition transferred to them as part of the Site

1 Evaluation Committee conditions. And, then, they
2 impose that to your organization via contract?

3 A. (D'Elia) That's correct.

4 Q. And, then, you impose that from your organization to
5 the logging people that you buy it via contract, but
6 it's just not clear to me that who is -- who in all of
7 that group is taking the responsibility to ensure that
8 those conditions are actually met?

9 A. (D'Elia) Well, I would suspect that it would start
10 with, of course, if there was a violation, of course,
11 it would probably show up to us first, RCT.

12 Q. How would you find the violation?

13 A. (D'Elia) Well, someone would either -- we would either
14 find it on our own, by having somebody on the job
15 overseeing it. But, more so, if it was just reported
16 by someone in the public driving by and looking at a
17 job that was, you know, that wasn't being done very
18 well. So, it's, you know, other than that, because of
19 the sheer volume of the number of operators coming from
20 such a geographic area, it's just impossible to check
21 every job going on simultaneously while the operation
22 is going on. I guess, that's --

23 Q. Well, I guess, I mean, I spend a lot of time up in the
24 woods hiking, and I wouldn't have any idea how -- walk

1 by a job and determine whether it was in compliance
2 with a sustainability contract or not.

3 A. (D'Elia) Yes.

4 Q. So, I think relying on the public is a little bit of a
5 stretch, but --

6 A. (D'Elia) Well, okay. Then, of course, there's the --
7 what are we talking about as far as "sustainability"?
8 Is "sustainability", you know, over-cutting? Is it,
9 you know, --

10 Q. But, excuse me, I wasn't trying to define, open that
11 whole thing up.

12 A. (D'Elia) Okay.

13 Q. There are specific terms and conditions in the Site
14 Evaluation Committee conditions that were granted.
15 And, I'm just trying to figure out who is going to be
16 responsible for making sure that those terms were
17 complied with?

18 A. (D'Elia) Well, what we'll do is the best we can -- I
19 guess, to narrow it down, as -- we will be keeping
20 track on where the wood is coming from, who the
21 operator is, and where their location is. So, that's a
22 given. From there, you know, it's -- so, we're going
23 to be, RCT, as the people that are purchasing the wood,
24 and transferring that wood into Laidlaw facilities,

1 will be ultimately responsible and will be monitoring
2 this stuff.

3 Q. All right. Thank you. I had a couple of other
4 questions as well. This has to do with -- somewhat to
5 do with scheduling, and the impact of the various
6 things that have changed now since the last time the
7 Committee met on this. And, again, this could be for
8 whoever on the Committee -- on the panel is best
9 qualified to answer it.

10 There was a statement made that they
11 were looking for a "June construction loan closing".
12 But there's also a condition in the -- I think it was
13 -- it's in the revised Purchase Power Agreement, and it
14 was also in the original one, I believe, that says that
15 "Public Service is requiring a non-appealable PUC
16 decision."

17 Now, just walking through the process,
18 there's been a request for rehearing filed with the
19 PUC, which there's another time frame, I believe it's
20 up to 30 days for the PUC to respond to that. Then,
21 once that decision is made, let's assume it was made in
22 a way that Berlin Laidlaw would like, let's just say
23 that the request for rehearing was denied. Then,
24 there's, I believe, another 30 days where those

1 Applicants could then -- or, they're not the
2 "Applicants", but the people that filed for the
3 rehearing could appeal to the Supreme Court. And, I
4 wouldn't even hazard a guess when the Supreme Court
5 would respond, even if they responded, again, with a
6 decision that was in the Applicant's best interest, it
7 would -- I would think it would be at least a few
8 months before that happens. So, we're looking at the
9 possibility of not seeing this "non-appealable PUC
10 decision" for maybe four to five months from now, and
11 it's probably somewhat optimistic. Would you still
12 anticipate a June construction loan closing if that
13 clause in the Purchase Power Agreement hadn't been met?

14 A. (Eastwick) We have, you know, been working with all of
15 the different financing parties targeting a June close.
16 It would be difficult to close with an appeal
17 outstanding. So, we are adjusting the timetable
18 accordingly to accommodate those various decisions.

19 Q. Okay. And, again, going along with the schedule idea,
20 the ARRA 1603 Investment Tax Grant has been extended
21 through the end of this year. Even with the delays
22 that we just talked about, do you still anticipate that
23 you'd be able to meet whatever milestone is required in
24 calendar year 2011 to be eligible for the Investment

1 Tax Grant?

2 A. (Eastwick) Yes. There are two ways of becoming
3 eligible for that tax grant or that cash grant. And,
4 we already met one of them, which is at least 5 percent
5 of the anticipated cost of the Project has already been
6 spent. So, based on our advisors, and based on our
7 accounting, we've already met that eligibility.

8 Q. So, just so I understand that, let's just say the
9 appeals process was a little more protracted, and you
10 didn't get this non-appealable decision until
11 January 15th of next year, you've already qualified for
12 the IT -- the Investment Tax Grants by virtue of the
13 money you've spent to date?

14 A. (Eastwick) We are eligible, yes.

15 Q. Okay. Okay, that helps. Again, anybody can answer
16 this. Have -- I don't believe you've received a
17 capacity supply obligation through the Forward Capacity
18 Auction as of yet?

19 A. (Kusche) Actually, yes, we have.

20 Q. Okay.

21 A. (Kusche) We participated in Forward Capacity Auction
22 Number 4, I believe it was, which is for the capacity
23 year June 1, 2013 through May 31st, 2014. And, we
24 received a capacity obligation of I want to say

1 58 megawatts.

2 Q. Okay. Do you -- then, safe to assume, you think it
3 will be operational by June 1st, 2013?

4 A. (Kusche) We're looking at approximately a 27-month
5 construction period. So, you know, we'll have to, of
6 course, at this point it's a bit of a moving target.
7 But, even with that being said, if we're not, there are
8 mechanisms in the Forward Capacity Market to deal with
9 the contingencies --

10 Q. Okay.

11 A. (Kusche) -- that a plant hasn't become commercial by
12 that date. And, we're fully aware of those, and we'll
13 be doing what we need to.

14 Q. Okay. There was a couple other questions now on the
15 Gorham mill reopening. There was already some previous
16 discussion on this earlier. Going back and looking, it
17 appears that a lot of the testimony that we got in the
18 earlier hearings on the availability of wood, a lot of
19 it was based on the fact that, because there had been
20 mill closings, that that wood that was previously being
21 consumed in the mills would, you know, now not be
22 consumed, so it would be available for other uses. But
23 I heard this morning that you're saying that Laidlaw or
24 the Laidlaw Berlin would have no effect on the

1 reopening of the Gorham mill, and I guess subsequently
2 you could say the reopening of the Gorham mill would
3 have no effect on Laidlaw Berlin. If someone could
4 comment on that a little bit? Are we saying that there
5 is sufficient wood around, so that, even though both of
6 these entities are going to increase the demand for
7 wood products, that they won't be in competition for
8 either the same product or there's just enough around
9 so it doesn't make any difference?

10 A. (D'Elia) The wood product that the Gorham mill will be
11 looking for is a finished product. Meaning that it's
12 been taken from the roundwood stage, and the roundwood
13 has been chipped, and then run through a digester and
14 made into what they call a "Kraft", something that is
15 then thrown into sort of a mixture to make the final
16 end product. Now, you have various pulp mills
17 throughout New England that are generating that stuff,
18 for their own consumption on-site, as well as to sell
19 to other paper mills. It's very -- you know, people,
20 these mills change. As well as other facilities
21 throughout the country, and, in fact, other facilities
22 throughout the world. It's a commodity that's out
23 there that paper mills buy on the open market.

24 So, it's a stretch to say that the

1 Laidlaw plant will have a direct effect on the cost of
2 pulp into the Gorham facility. Just because what the
3 Gorham is using is a -- it's a much more refined
4 product that they could buy on the open market.

5 Q. Okay. Well, that answers my question. Thank you.

6 A. (Kusche) May I -- I just want to add on a little bit to
7 that to clarify, you know, to take the view a little
8 bit higher. The Berlin facility, which we're
9 renovating -- we're rebuilding, was the pulp mill that
10 supplied the pulp to the Gorham Mill through a
11 pipeline, a two-mile pipeline. That pulp mill in
12 Berlin has been dismantled, as you know. So, there is
13 no raw material that's coming from the Berlin area to
14 make pulp for the Gorham facility. The Gorham facility
15 now has to buy pulp that's made somewhere else. So,
16 that's why we're saying there's no direct competition
17 for raw material in Berlin with the Gorham mill,
18 because they simply don't -- they don't take any raw
19 material at the Gorham mill.

20 Q. Okay. And, the market seems like it's big enough for
21 that process, whatever you call it, --

22 A. (D'Elia) Right.

23 Q. -- so that the Laidlaw consuming wood in the area won't
24 have much an effect on it?

1 A. (D'Elia) No.

2 Q. Okay. While we're on that topic, originally there was
3 some talk about getting -- or, having the Laidlaw
4 Project supply I believe it was hot water to the Gorham
5 mill. Now, with the Gorham mill coming back, is that
6 something you anticipate looking at?

7 A. (Kusche) Yes. Absolutely.

8 Q. Okay. The new company that's being brought in now,
9 called -- I think it was called "Delta", are they going
10 to be -- do they have the day-to-day operations of the
11 plant?

12 A. (Kusche) Delta Power Services?

13 Q. Yes.

14 A. (Kusche) Yes.

15 Q. So, they will have the authority to run the plant as
16 necessary, to shut it down, start it up, to make
17 maintenance decisions and so forth?

18 A. (Kusche) Yes.

19 Q. Okay. And, who's going to be responsible for the
20 bidding for the facility? By that, I mean the
21 day-ahead and real-time energy bids, as well as future
22 bids into the Forward Capacity Market?

23 A. (Kusche) Public Service of New Hampshire.

24 Q. Okay. That will be part of there --

1 A. (Kusche) Yes.

2 Q. -- through the Purchase Power Agreement?

3 (Multiple parties speaking at the same
4 time.)

5 MR. HARRINGTON: Oh, I'm sorry.

6 BY THE WITNESS:

7 A. (Kusche) Yes, they are, and forgive me if I get the
8 term wrong, the "lead participant".

9 BY MR. HARRINGTON:

10 Q. Okay.

11 A. (Kusche) So, that will be their responsibility.

12 Q. And, this is my final question here, Michael Bartoszek,
13 I believe I've pronounced that more or less correct, he
14 made a statement something to the effect that "I'm the
15 CEO of the Applicant and the buck stops here." So,
16 with him gone, I just want to make clear, where does
17 the buck stop now?

18 A. (Kusche) The buck stops with Cate Street Capital. And,
19 it will -- you can go up the chain of command at Cate
20 Street Capital. Theoretically, I will be the contact
21 person at Cate Street Capital or Chuck Grecco, the
22 current Project Manager for the Project. And,
23 ultimately, it will go up to the senior management of
24 Cate Street Capital.

1 MR. HARRINGTON: Okay. Thank you.

2 That's all the questions I have, Mr. Chairman.

3 CHAIRMAN BURACK: Director Scott.

4 DIR. SCOTT: Good afternoon.

5 Mr. D'Elia, I have hopefully a quick question for you.

6 BY DIR. SCOTT:

7 Q. On Page 4 of your prefiled testimony, you outline a
8 little bit on the bottom about the Fuel Supply
9 Agreement between RCT and Laidlaw, and you mention two
10 changes. One is the 45-day storage buffer, if you
11 will, for mud season, and that seems kind of
12 self-explanatory to me. I was hoping -- and I can see
13 how that would be beneficial. I was hoping you could
14 explain a little bit more the change between the
15 "stumpage collateral package" being replaced with a
16 "performance bond requirement". What that was? And,
17 why is that beneficial.

18 MR. NEEDLEMAN: I'll just suggest that
19 maybe Ray answer that, because Ross was not privy to the
20 original contract.

21 DIR. SCOTT: Okay. That's fine with me.
22 Thank you.

23 BY THE WITNESS:

24 A. (Kusche) The security for the Wood Supply Agreement

1 with RCT is being provided through a \$5 million
2 performance bond. That contrasts with the security
3 that was available through Cousineau, which was a
4 pledge of stumpage on I believe it was 11,000 or
5 15,000 acres which Cousineau owns. Both Cate Street
6 Capital and our lenders feel that a performance bond is
7 far superior to a pledge of stumpage, as collateral, as
8 security for performance.

9 BY DIR. SCOTT:

10 Q. So, could you help me out. What is a "performance
11 bond" in this context?

12 A. (Kusche) Oh. Well, I'll let -- do you want to answer
13 that?

14 A. (Eastwick) Go ahead.

15 A. (Kusche) Well, "performance bond" simply means that we
16 have an instrument to go to if there is a breach of the
17 contract -- a performance breach of the contract. It's
18 a -- and, I'm not a financial person, so I may get this
19 wrong. But, from a layman's perspective, it is funds
20 that are available to compensate the counterparty, us
21 in that, for breach of contract or failure to perform.
22 So, for instance, if we were then required to go out
23 and purchase our own wood to make up for a performance
24 shortfall from RCT, we could use the performance bond

1 funds to pay that difference.

2 DIR. SCOTT: Thank you.

3 CHAIRMAN BURACK: Other questions for
4 the parties? Commissioner Ignatius.

5 CMSR. IGNATIUS: Thank you, Mr.
6 Chairman. Good afternoon.

7 BY CMSR. IGNATIUS:

8 Q. Mr. Eastwick, could you turn to Exhibit 5 in the
9 packet. Do you have that with you?

10 A. (Eastwick) Yes.

11 Q. Thank you. It's a corporate structure graphic. And,
12 it doesn't contain confidential information, and I know
13 Mr. Roth has a version of this that's marked
14 "confidential". But we're just looking at the one
15 that's not confidential.

16 CHAIRMAN BURACK: Just to be clear,
17 actually, Counsel for the Public's Exhibit 5 is not a
18 confidential document. That's --

19 MR. NEEDLEMAN: Correct.

20 CHAIRMAN BURACK: That's correct.

21 MR. ROTH: And, they have the
22 unfortunate coincidence of both being called "Exhibit 5".

23 CMSR. IGNATIUS: Nicely done.

24 CHAIRMAN BURACK: There are different

1 titles on those two documents, and there are some
2 differences between them.

3 CMSR. IGNATIUS: Thank you. Probably
4 either one would work. But the simpler one is the one
5 that was attached to the Petition.

6 BY CMSR. IGNATIUS:

7 Q. And, I'd like to ask you about the role of Burgess
8 BioPower, which is described in your testimony as being
9 the "Operational Manager of the Project", and yet Mr.
10 Kusche's testimony talks about "Delta Power being the
11 operator". So, would you explain how those two things,
12 what each of them does to your understanding and help
13 clarify their roles please?

14 A. (Eastwick) Burgess BioPower has a right-of-use
15 agreement from Berlin Station and is the site lessee.
16 And, the right-of-use agreement is the mechanism by
17 which all of the contractual relationships that Berlin
18 Station has are available to Burgess BioPower. So, the
19 Delta Power agreement is with Berlin Station. But we
20 have set up a lessor/lessee relationship, mostly
21 because that is a requirement of our NMTC allocatees to
22 operate the plant.

23 Q. So, in your testimony where you say that Burgess is a
24 "Manager for Berlin Station", I take it that doesn't

1 mean the day-to-day management role? It's really
2 something that is for organizational purposes for the
3 New Market Tax Credit requirements?

4 A. (Eastwick) Yes. That's correct.

5 Q. So, if we were to ask who the operator of the facility
6 will be once it has gone into commercial operation,
7 what would the answer be?

8 A. (Eastwick) Burgess BioPower, by means of the
9 right-of-use agreement.

10 Q. But Burgess doesn't have a contractual relationship
11 with Delta Power, does it?

12 A. (Eastwick) No, it does not.

13 Q. So, how do you get authority between Burgess BioPower
14 and Delta?

15 A. (Eastwick) By means of the right-of-use agreement
16 between Berlin Station and Burgess BioPower. So, all
17 of the contractual arrangements at Berlin Station are
18 available to Burgess BioPower through the right-of-use
19 agreement, and through the lease.

20 Q. And, is Burgess Power -- BioPower essentially another
21 subsidiary of Cate Street Capital?

22 A. (Eastwick) The ownership structure of Burgess BioPower
23 is ultimately at NewCo Energy, which is Cate Street
24 Capital, and our investors have ownership in that.

1 Q. Have the New Market Tax Credit, the people, I don't
2 even know what to refer to them as, the ones who have
3 told you that you need to restructure to be in
4 compliance with their standards, have they reviewed the
5 structure and found it acceptable?

6 A. (Eastwick) Yes, they have.

7 Q. Will there be any difficulty in people in Berlin and
8 elsewhere knowing who to go to if they have concerns
9 about operational problems at the facility?

10 A. (Eastwick) No. As Mr. Kusche testified, Cate Street
11 Capital and our direct project managers and senior
12 management are responsible.

13 Q. And, it sounds as though both Mr. Grecco and Mr. Kusche
14 are being described as "Project Managers". What's your
15 understanding of the Project Manager of the facility?

16 A. (Eastwick) Mr. Grecco, on the Advisory Board, and
17 overseeing all of the project management, is ultimately
18 responsible.

19 Q. Why is the Aware, and I've forgotten the formal name of
20 it, the "Aware Funding", whatever the formal title was,
21 why are they now out of the structure?

22 A. (Eastwick) We've tried to structure our -- we've tried
23 to design the corporate structure to meet a number of
24 different needs. And, Aware didn't really fit into

1 that new corporate structure that needs to be created
2 to meet all of those needs.

3 Q. Can you explain that a little further?

4 A. (Eastwick) Well, we have really one entity that has
5 ownership in the Project through the organizational
6 structure, which is NewCo Energy. So, rather than
7 have, you know, additional layers of corporate
8 structure, this was the simplest way to do it, is to
9 have just the ownership at NewCo Energy, LLC.

10 Q. I know that you have adopted the testimony of Mr.
11 Mueller. And, is that because he has retired?

12 A. (Eastwick) He is no longer part of the active
13 management of Cate Street.

14 Q. Why is that?

15 A. (Eastwick) He decided to pursue other interests as a
16 manager of Cate Street.

17 Q. I'm sorry, you lost me on that one. He's still with
18 Cate Street, but in a different role?

19 A. (Eastwick) Well, he has been and continues to be an
20 investor, but is no longer part of the active
21 management team of Cate Street Capital, Inc.

22 Q. I know, from his prefiled testimony, that he has
23 described 27 years of experience with Accenture and, in
24 particular, some energy generation experience. Do you

1 have energy experience in your own personal background?

2 A. (Eastwick) I have spent my career financing different
3 projects and businesses across a number of different
4 industries, some of which have been energy. But that's
5 not been the primary industry. And, frankly, I haven't
6 had a primary industry in which I've focused this
7 financing activity in my career.

8 Q. And, the experience you have had having to do with
9 energy, did it have anything to do with biomass
10 operations?

11 A. (Eastwick) No.

12 Q. What will your ongoing role be? I guess I'm getting at
13 the difference -- you're the one testifying, and yet it
14 sounds like Mr. Grecco is the one who is going to be
15 more predominantly involved, and Mr. Kusche is now an
16 employee of Cate Street and will be very involved. So,
17 how do we end up with you as the one testifying?

18 A. (Eastwick) Since part of this proceeding was around the
19 organizational structure, I've been very involved in
20 that, as it's relating particularly to the
21 financeability and the financing structures, and
22 getting our investors and our lenders comfortable with
23 what we're doing here. So, we decided I was the best
24 person to answer those types of questions.

1 Q. Mr. Kusche, a couple of questions. The description of
2 Delta Power, which you testified to in your prefiled
3 testimony and this morning, is that, the explanation
4 Mr. Eastwick gave, does that meet your understanding of
5 who the manager from the operational point of view will
6 be and the relationship between Delta and Burgess
7 BioPower?

8 A. (Kusche) Yes. I don't think they're inconsistent. I
9 mean, it's kind of, in a way, semantics. The
10 "manager", which is a term for corporate structure, is
11 something that Mr. Eastwick was referring to as to the
12 corporate structure and who the manager is.

13 When we're talking about the operations
14 and maintenance contract, and the entity that's going
15 to be performing those functions, that will be Delta
16 Power Services, under a contract, with very specific
17 duties and responsibilities, and reporting
18 requirements, and conditions, requirements that they
19 meet and comply with all the terms and conditions of
20 the Certificate. And, so, I don't think that there's
21 any -- there shouldn't be any confusion about the role
22 of Delta Power Services in performing the day-to-day,
23 year-to-year operations at the facility, employing the
24 personnel, complying with all the terms and conditions

1 of the Certificate, all the environmental compliance
2 and reporting, everything, soup-to-nuts with regard to
3 the Project, and reporting to the owner.

4 That's very distinct from the corporate
5 structure and who the manager of some of these entities
6 is designated to be. So, there's no overlap. And,
7 there should be no confusion.

8 Q. Thank you. Delta Power, in your testimony and in the
9 materials that were attached to the Petition, shows
10 experience with one biomass plant, isn't that correct?

11 A. (Kusche) That's correct. The Cadillac plant.

12 Q. And, do you know how long that's been in operation?

13 A. (Kusche) I don't believe it's an '80s vintage plant,
14 but I don't know the exact. I don't know how long it's
15 been operating.

16 Q. Do you know anything about its performance over those
17 years?

18 A. (Kusche) Not the detail. As I mentioned, and maybe I
19 should elaborate a little bit, we actually spoke to
20 Delta Power Services through Delta -- or, through B&W
21 as long as three years ago. They expressed an interest
22 in having the operating contract for this Project.
23 They were among a number of different entities that
24 have expressed an interest in operating the plant.

1 And, in our opinion, and in the opinion of our lenders,
2 you know, Delta Power Services, alone and with the
3 backing of B&W and their decades of experience in both
4 building biomass plants and operating biomass plants,
5 we feel is, you know, perfectly qualified and has the
6 required resumé of experience to operate solid fuel
7 plants, including biomass plants. Delta Power Services
8 is the fourth largest company of its kind in the U.S.
9 providing these services. So, we have total
10 confidence, as do our lenders, in their ability to
11 operate and manage this facility.

12 Q. Well, you recall in the hearings last summer for this
13 Project, there was an awful lot of discussion about the
14 experience of the Homeland Renewable folks and
15 Mr. Strickler regarding their day-to-day management and
16 success records with biomass facilities. Do you
17 remember that?

18 A. (Kusche) Uh-huh. I do.

19 Q. I guess, to go from that, to there's one 40-megawatt
20 plant, and we don't know how it's done, but the lenders
21 are comfortable with it, doesn't seem like as thorough
22 an answer as I might have hoped. You have anything
23 else you can add to that?

24 A. (Kusche) Well, Homeland -- Homeland renewable has one

1 operating plant in the U.S. It is a biomass and
2 poultry litter plant in the Midwest. They also I think
3 constructed two similar plants in England, which I'm
4 not sure if they still operate or not. So, comparing
5 Delta Power Services to Homeland, you know, I don't see
6 how Delta Power Services in any way falls short in that
7 comparison. There are 80 some odd biomass plants in
8 the U.S. operating, as far as I know, many of them are
9 in New England. I have had experience operating these
10 plants. And, there is no one firm in the U.S. that
11 specializes in operating biomass plants. Very often
12 they're done on a one-off basis, as I was involved in
13 at Greenville. They are not nuclear plants. They are
14 very similar to, operating a biomass plant, to
15 operating any kind of power plant, other than the fuel
16 is a little bit different. So, we feel very
17 comfortable with Delta Power Services' relationship
18 with its parent Company, B&W, with decades of
19 experience in biomass. We've spent a lot of time
20 discussing both the contract performance, the people,
21 learning more about the people, learning about their
22 reputation in the industry, and feel very comfortable
23 with our selection.

24 Q. The interconnection agreement -- I'm sorry, the

1 interconnection study that you now updated us on from
2 the ISO, has that given rise to any change in what the
3 expected interconnection is and what you testified to
4 that was on Page 6 of your prefiled testimony?

5 A. (Kusche) Can you repeat the question?

6 Q. Sure. On Page 6 of your testimony, you said "well, we
7 still don't have the final arrangements for
8 interconnection, but what we've been expecting or" --
9 and there are three bullet points of the locations of
10 interconnection that you anticipate. And, then, today,
11 you described getting more thorough -- or, I'm sorry,
12 getting close to a final interconnection study from the
13 ISO. And, wondered if, because of that, there was any
14 change to what you expect the interconnection
15 requirements to be?

16 A. (Kusche) Oh.

17 Q. Either location or new facilities that might be needed?

18 A. (Kusche) The answer is "no." The studies -- the study,
19 although not deemed final yet, the only requirement to
20 go from the Draft Final System Impact Study to the
21 Final Impact Study is for us to accept the study
22 results, which we've done formally in writing, and for
23 us to have the mandatory meeting with ISO-New England
24 to discuss the report. And, the results of the report,

1 both the steady state and the system impact, are that
2 there are no changes that are going to be required to
3 either our interconnection requirements or the
4 facilities of the transmission owners. So,
5 essentially, nothing additional is required to
6 accommodate the 9.1 megawatts that we've requested.

7 Q. You also said in your prefiled at Page 10 that the
8 increase in output, you recited what isn't changed in a
9 number of different ways, permitting, environmental
10 impacts, that sort of thing. And, on Line 18, you said
11 that the change "will not materially change the size or
12 appearance of the Project's structures". And, that's
13 the only time there was a qualifying term, it said
14 "materially change", as opposed to just "won't change
15 it". Is there something that will change, but, in your
16 view, it isn't a significant change?

17 A. (Kusche) No. I mean, the size of the turbine generator
18 building, to accommodate the small increase in the size
19 of the new steam turbine generator, as opposed to a
20 used one, is immaterial. There's no requirement, it's
21 -- there's no requirement for a larger power house.
22 And, I think that we could probably take the word
23 "material" out and I would stand by that testimony.

24 Q. Okay. And, on the following page, Page 11, you talk

1 about sound impacts from increasing output. And, I
2 just want to make sure I understand correctly. Is the
3 bottom line, in Line 9, that, when you put together the
4 increased output, as well as sound insulating
5 characteristics, there will be less than a 0.1 decibel
6 increase in sound?

7 A. (Kusche) Yes. That's correct. And, that is not, of
8 course, a direct measurement. But the algorithm that's
9 used for the sound studies is simply -- it's based upon
10 the size of the turbine generator. So, going from
11 70 megawatts to 75 results in a nominal increase in the
12 expected use table, it's an algorithm. And, so, then,
13 to do the actual sound studies, we have to then apply
14 layers of insulation, sound insulation for the turbine
15 and the generator, the turbine generator building, to
16 get to the boundary of the Project. So, simply by
17 virtue of increasing the size, the algorithm is going
18 to produce an increased decibel. And, what the results
19 have shown is it's less than a tenth -- is a less than
20 a tenth of a decibel increase at the property line.

21 Q. One other area for you. The fuel agreement that you
22 had presented in the hearings last summer with
23 Cousineau, you stated in your testimony you -- "Laidlaw
24 and Cousineau", this is at Page 12, "were unable to

1 settle on terms", and thus we have the new Fuel
2 Supplier Agreement today.

3 A. (Kusche) Correct.

4 Q. I was surprised that their terms were not final, and it
5 seemed to me it was being presented as it was an all
6 but executed agreement, and perhaps I misunderstood.
7 Are we in the same situation today? Are the terms that
8 are presented with Richard Carrier Trucking also
9 subject to negotiation that may change?

10 A. (Kusche) Well, let me answer the first part of that
11 first. That was not a signed contract with Cousineau
12 at the time of our prior hearings. And, we were
13 surprised. But we were asked to make a price
14 concession to Cousineau after the hearings, which we
15 couldn't do. So, that was one of the business terms
16 that had changed. We have a signed contract with
17 Richard Carrier Trucking now. So, the terms of that
18 contract are not going to change.

19 Q. Thank you. Mr. D'Elia, just a couple of questions to
20 you, if that --

21 CHAIRMAN BURACK: May I just interrupt
22 for a moment?

23 CMSR. IGNATIUS: Yes.

24 CHAIRMAN BURACK: How much more time do

1 you think you need? Is this --

2 CMSR. IGNATIUS: A minute.

3 CHAIRMAN BURACK: Okay.

4 BY CMSR. IGNATIUS:

5 Q. Put yourself in the position of a logger in the North
6 Country, who may not currently have a relationship with
7 your company. How do they -- how does someone like
8 that get into the game with this Project?

9 A. (D'Elia) Sure. Well, as soon as the construction
10 begins, we will have to start reaching out to the wood
11 contractors that are presently there, and as well as
12 new ones that want to get into the business. We
13 certainly are going -- it's to the best -- to the
14 interest of the best interests of the Project, Laidlaw,
15 to have as many local suppliers as possible. So, and,
16 of course, they will seek us out, as well as, you know,
17 us finding them. You know, just because I've been in
18 procurement for so long in doing things, you know,
19 these guys will -- these men and woman will show up at
20 your door and say "Hey, listen. What's the story? How
21 do I get involved?" So, I think that will be a
22 relatively easy transition, as soon as they start
23 seeing activity, as far as construction and so forth
24 going on at the Berlin Station.

1 Q. And, you don't require loggers you work with to be
2 exclusively under contract with you, do you?

3 A. (D'Elia) No. No. Not at all. They will, at the
4 Laidlaw facility, not just anybody that has a truckload
5 of chips are going to be able just to drive in and say
6 "I'm here, I'm going to dump it", and so forth. That's
7 not going to happen. Just as in our plant in Henniker,
8 or wherever we buy wood, we have to be notified who the
9 supplier is and, you know, get that information about
10 them. So, we don't have any exclusive agreements with
11 a set number of contractors, no.

12 Q. Who's responsible for educating the suppliers of the
13 particular requirements that you've agreed to about
14 sustainability and not using construction debris and
15 that sort of thing?

16 A. (D'Elia) Yes. You know, when we go through the
17 contract and to negotiate the volume that they're going
18 to be delivering, of course, and, you know, the price
19 is and so forth, that will all be stipulated in there.
20 Because of the sheer volume, we're just going to have
21 to go out there and get contracts and start adding up
22 numbers, and seeing that, you know, until we hit our
23 totals for that 700,000 tons per year.

24 CMSR. IGNATIUS: Thank you. Nothing

1 further.

2 CHAIRMAN BURACK: Okay. Thank you very
3 much, Commissioner Ignatius. The hour is now
4 approximately 1:00. I suspect that there will be
5 additional questions for the panel before we go into a
6 nonpublic session here. I'm going to suggest, unless
7 parties feel that this is too much time, that we take 45
8 minutes for a lunch break, come back here at 1:45, at
9 which time we will resume with questions from the panel in
10 regular session here. And, once we have exhausted those
11 questions, we will then have a motion to go into a
12 nonpublic session to consider those aspects of the
13 confidential documents that need to be considered in a
14 nonpublic session.

15 So, unless anybody has anything else or
16 any objections or concerns to that, we will now take
17 approximately a 45-minute break and be back here at 1:45.

18 (Whereupon the Day 1 Morning Session
19 recessed for lunch at 1:04 p.m. The
20 Day 1 Afternoon Session to resume
21 under separate cover so designated.)
22
23
24